FILED
05/08/2024 06:13:52 PM
Post Trial Unit
By: K. JOH

IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-51-CR-0305001-2005
v.	:	
TRACY JORDAN	:	

COUNSELED PETITION FOR
POST-CONVICTION RELIEF

Since 2004, Tracy Jordan has been incarcerated for a crime he did not commit. Now, nearly two decades later, the Commonwealth has disclosed its file and, with it, revealed critical *Brady* evidence wholly undermining the case against him. The suppressed files reveal that there was a compelling alternative theory for Harold Wexler's tragic murder, that a key suspect was identified by a suppressed source at the scene, and that contemporaneous testing established that the ballistics at the scene did *not* match Nanette Jordan's service weapon. The newly disclosed evidence emphatically confirms what Mr. Jordan has always maintained: he is innocent.

On November 15, 2004, Harold Wexler was murdered by an unidentified assailant as he opened his check cashing store, Cash Plus. Police recovered Tracy Jordan's fingerprint from one of multiple plastics bags found littering the store. Frank Bagley's fingerprint was lifted from the front door. Tracy Jordan was arrested nine days later when investigators obtained a false positive ballistics match to his wife's service weapon. By the time of trial, the Commonwealth had disavowed that initial test. At trial, prosecutors told the jury that though its subsequent ballistics testing was inconclusive, bunter mark evidence provided a link to Nanette Jordan's weapon.

The case against Mr. Jordan was tenuous at best. Mr. Jordan explained that he lived two blocks away from the storefront, he frequented the store and had recently been there with his daughter, explaining his fingerprint, and he presented a consistent alibi. The sole eyewitness, Terrance Crawford, did *not* identify Mr. Jordan. At trial, the Commonwealth presented the jury with a binary choice between the two men whose fingerprints were found in the store: Tracy Jordan, or Frank Bagley. Mr. Bagley and his ex-girlfriend testified for the Commonwealth, presenting an alibi for his own fingerprints. The jury deliberated for three days, as long as the trial, and repeatedly warned the Trial Court that it was on the verge of deadlock before ultimately returning a guilty verdict.

Mr. Jordan has never stopped litigating and asserting his innocence, but the Commonwealth defied his efforts to challenge his wrongful conviction at every turn, even directly misrepresenting the sole eyewitness's testimony on direct appeal. In the face of numerous challenges, the Commonwealth refused to disclose significant evidence undermining law enforcement's investigation, pointing to a clear alternative suspect and motive for Mr. Wexler's tragic murder, and exculpating Mr. Jordan.

The new evidence reveals that at the time of his death, Mr. Wexler had recently pled guilty in federal court, and was actively cooperating with authorities, in a wide-ranging federal money laundering investigation into his check cashing business. As a part of a negotiated plea for a downward departure, Mr. Wexler had provided information concerning his employees and narcotics traffickers who had made structured transactions through the storefront. The files reveal that Mr. Wexler's attorney, one of his employees, and multiple federal agencies rapidly notified police that he was a cooperating witness and indicated a potential connection to his murder. Police utterly failed to investigate this theory or interview any Cash Plus employees,

despite the fact that this explanation better matched the evidence at the scene, as the only item taken during the homicide was his briefcase, which contained his computer, paperwork, and a compact disc labeled Cash Plus Taxes.

Police also received an undisclosed tip from a woman who stated that she was with a man named Warren Wright when he committed the homicide on the morning of November 15, 2004. The details provided by the woman matched non-public facts the police had obtained during their investigation. When police briefly investigated Warren Wright, they quickly learned that he had history of burglary and theft, obtained various evidence that he had recently been in the area of the check cashing store, and discovered a loaded firearm in his vehicle with obliterated serial numbers. Wright was never arrested and his identity was never disclosed to Mr. Jordan or his counsel.

The Commonwealth also failed to disclose that it had uploaded images of the recovered ballistics evidence and from a test fire of Nannette Jordan's weapon to the National Integrated Ballistic Information Network (NIBIN) in 2006. The ballistics comparison system did not return a match. Recent retesting conducted by the Commonwealth with higher quality images confirmed this result, excluding Ms. Jordan's weapon and squarely refuting the Commonwealth's case.

The new disclosures expose a tale of two cases: the narrow, strained theory presented to the jury at trial, versus the vast trove of suppressed evidence, which points to compelling alternative suspects ignored by the police, vindicating Mr. Jordan.

For nearly 20 years, Tracy Jordan has never wavered. He has steadfastly maintained his innocence and diligently challenged his wrongful conviction. Despite his distance from them, Mr. Jordan has been a present and dedicated father to his children, and a caring supporter of his

elderly mother. Mr. Jordan has remained focused on his family and his case; he has not incurred a single disciplinary infraction over nearly two decades of incarceration. Now, he finally has the evidence to prove what he has declared since his arrest on November 24, 2004. Tracy Jordan is innocent. His wrongful conviction must be overturned.

RELEVANT PROCEDURAL HISTORY

On November 15, 2004, the owner of Cash Plus, Harold Wexler, was tragically shot and killed in his Philadelphia check-cashing store. Nine days later, on November 24, 2004, Tracy Jordan was capitally charged with murder, robbery, possession of an unlicensed firearm, and other associated charges. *Commonwealth v. Jordan*, CP-51-CR-0305001-2005. The three-day jury trial began on November 1, 2006, at which Petitioner was represented by Attorney Gregory Pagano. The jury, after deliberating for three days, returned a guilty verdict for second degree murder, robbery, and possession of an instrument of crime. The court sentenced Mr. Jordan to a mandatory term of life imprisonment without the possibility of parole for second-degree murder and two and a half to five years for PIC. The robbery merged with second-degree murder for sentencing purposes. Tracy Jordan is currently incarcerated at Coal Township State Correctional Institution located at 1 Kelly Drive, Coal Township, Pa., 17866.

Barbara Ann McDermott, Esq. filed a direct appeal on behalf of Mr. Jordan, and on August 4, 2008, the Pennsylvania Superior Court affirmed the judgement of conviction. *Commonwealth v. Jordan*, 961 A.2d 1277 (Pa. Super. 2008). Counsel did not file a Petition for Allowance of Appeal in the Pennsylvania Supreme Court.

On December 8, 2008, Mr. Jordan filed a timely *pro se* petition for relief pursuant to Pennsylvania's Post Conviction Relief Act (PCRA). Attorney Elayne Bryn was appointed to April, 1, 2009 to represent Mr. Jordan. On July 8, 2011, counsel submitted an amended petition

and an accompanying memorandum of law. On March 2, 2012, the trial court dismissed the PCRA petition without a hearing.

Mr. Jordan, acting *pro se*, filed an appeal to the Pennsylvania Superior Court. On appeal, the Superior Court remanded for a hearing solely on the claim that trial counsel was ineffective for failing to move to suppress Mr. Jordan's pre-arrest statement. *Commonwealth v. Jordan*, 82 A.3d 1063 (Pa. Super. 2013). Mr. Jordan conducted the evidentiary hearing on this issue *pro se*. On October 14, 2015, the Pennsylvania Superior Court affirmed the PCRA Court's decision. *Commonwealth v. Jordan*, 2308 EDA 2014 (Pa. Super. 2015).

Mr. Jordan filed a *pro se* Petition for Writ of Habeas Corpus in the United States District Court for the Eastern District of Pennsylvania. The District Court denied the petition on April 7, 2018. *Jordan v. McGinley*, No. 16-2784 (E.D. Pa. April 6, 2018). Mr. Tracy then filed a *pro se* appeal to the Third Circuit Court of Appeals. The Third Circuit Court of Appeals granted a certificate of appealability, limited to: (1) whether trial counsel was ineffective for not calling Tracy Jr. as an alibi witness; and (2) whether trial counsel was ineffective for not seeking an alibi instruction. The Federal Public Defender's Office was appointed, and after briefing, the Court denied relief on February 1, 2021. *Jordan v. Superintendent Coal Township SCI*, 841 Fed. Appx. 469 (3d. Cir. 2021).

STATEMENT OF FACTS

Harold Wexler was tragically shot and killed on the morning of November 15, 2004 in his store, Cash Plus, a check cashing store in Philadelphia. The only witness to the murder was Terrance Crawford, who worked as a cleanup man at the store at 8000 Ogontz Avenue. Mr. Crawford's job at Cash Plus was to clean up the trash from the back of the store and tidy up the inside of the building every Monday. N.T. 3/15/05, at 8.

On November 15, 2004, Mr. Crawford arrived at Cash Plus at 8:30am. and began taking out the trash. A man approached Mr. Crawford and asked if he was an employee of Cash Plus. *Id*. at 8-9. Mr. Crawford answered "no," and the man walked across the street to the bus stop in front of the carwash where he stood and talked "with another dude." Ex. A, at 1. Mr. Crawford testified that the encounter made him suspicious, particularly because of the criminal activity that he had noticed in the area in the past. N.T. 3/15/05, at 24-25. Mr. Crawford testified that the store was located near a driveway where illicit drugs were used and sex workers solicited. *Id*. at 25.

The store's owner, Harold Wexler, arrived at the store shortly before 9:00 a.m. *Id.* at 26. According to Terrance Crawford, Mr. Wexler and the store's security guard "always" arrived at the store at the same time, but on this day, the security guard came in two hours late.[1] *Id*. at 26-28. As Mr. Wexler began unlocking the doors to the store, the man who had approached Mr. Crawford earlier, returned. *Id*. at 10-11. The man put a gun to Mr. Crawford's head and said, "You know what it is!" (*Id*. at 12) and shoved Mr. Crawford into the store. Mr. Crawford explained that Mr. Wexler selflessly pushed him out of the way of danger and that was when Mr. Crawford heard a gunshot. *Id*. at 16. The assailant then ran out of the store. *Id*.

Mr. Crawford could not identify the assailant (*id.* at 43) but described the man as Black, 5'8 or 5'9 (*id*. at 21), 210 pounds, with a full beard. Ex. A, at 2. The man was wearing a puffy jacket with a black hood and a black knitted cap. N.T. 3/15/05 at 18; Ex. A, at 2. The man was also carrying a dark colored bag over his shoulder that he had the silver gun in.[2] *Id.* Police asked Crawford about the two plastic bags found on the ground at the scene, a white Sneaker City bag and a brown bag, and he responded that they were also carried by the assailant. N.T. 3/15/05, at

[1] This testimony conflicted with documents relating to Terrance Crawford's police transport to the Homicide Unit which detailed that Terrance Crawford was taken to the unit at 9:30am, and thus could not have known whether the security guard arrived two hours late. Ex. B.
[2] This detail was not disclosed through any media sources.

15-16. Mr. Crawford arrived at the Homicide Unit at 9:30am, shortly after the shooting (Ex. B) but did not provide a statement to Detective Dusak until 10:20pm. Ex. A, at 1.

Within days of the homicide, Mr. Crawford was shown a photo array containing Tracy Jordan's photo and did not identify him. N.T. 11/2/06, at 206. At the preliminary hearing, when asked whether Mr. Jordan was the person who shot Mr. Wexler, Mr. Crawford answered, "I don't know. I don't know him." N.T. 3/15/05, at 18. At the time of the incident, Terrance Crawford was ill with cancer and receiving treatment, including chemo therapy. *Id*. at 10, 29. Mr. Crawford had died of cancer by the time of trial and his videotaped preliminary hearing testimony was played for the jury.

Officer Robert Jaja was the first to respond to the 911 call concerning the shooting. Officer Jaja described Terrance Crawford as "yelling and screaming," and "very upset." N.T. 11/2/06, at 51. Mr. Crawford told Officer Jaja that the gunmen had ran southbound on Ogontz Avenue from 80th Street. *Id*. at 53. Officer Jaja found Harold Wexler on the ground with a gunshot wound to the head and radioed for medics. *Id*. at 52. Crime Scene Investigator Gary Guaraldo was also called to the scene. Investigator Guaraldo collected a fired cartridge case from a .40 caliber Smith & Wesson that was located six inches south of the north wall. *Id*. at 64. Investigator Guaraldo also collected a white plastic bag with Sneaker City label on it from the front of the store which was laying on top of broken glass. *Id*. at 65, 73-75. Inside the bag was a Dave and Buster's towel. *Id*. at 83. Officer Guaraldo was able to lift a print off of the white plastic bag. *Id*. at 87. A black plastic bag was discarded by law enforcement. *Id*. 94. Aside from the two bags, there was other debris on the floor of the store like a pizza shop brochure (*id.*) and a trash bag (*id.* at 95) that were never collected but depicted in crime scene photos. A latent print

from the store's door handle was also lifted. *Id*. at 93. Both the print on the door and the print from bag were submitted for identification.

Officer Clifford Parsons testified that he examined the latent prints submitted by Investigator Guaraldo. N.T. 11/3/06, at 100. The latent print from the store's door handle was identified as Frank Bagley's. *Id*. at 102, 105. Parsons also identified the latent print from the Sneaker City plastic bag as Tracy Jordan's. *Id.* at 105-107.

On November 22, 2004, Officer Frank Kubach of the Police Marine Unit was conducting a dive operation in the Schuylkill River near the Strawberry Mansion Bridge regarding an unrelated incident. N.T. 11/02/06, at 118. During this dive, Officer Kubach observed and collected a black briefcase. *Id*. at 119. The bag was saturated and he left it in the station to dry off. *Id*. at 121. Two days later, Officer Jonas saw the briefcase drying in the station. *Id*. at 124. Officer Jonas opened the briefcase and noticed a return address on an article of mail to a check cashing store on Ogontz Avenue. *Id*. 124-125. He then contacted the Homicide Unit and turned over the briefcase. *Id*.

Adrienne Byrd had worked at Mr. Wexler's check cashing store for nearly three years, but she was not interviewed until almost two years after Mr. Wexler's murder. N.T. 11/02/06, at 101. Ms. Byrd testified at trial that she considered Mr. Wexler a friend and confidant, and was close to his family. *Id*. at 101, 109. She testified that Mr. Wexler had owned two check cashing agencies, but that one had closed in 2004. *Id*. at 102. She explained that the store cashed checks, completed money orders and Western Union exchanges, and sold lottery tickets. *Id*. Ms. Byrd detailed that the money was kept in a safe in the store and that only Mr. Wexler took money in and out of the store. *Id.* at 105. Ms. Byrd was shown Mr. Wexler's briefcase and asked what he typically kept in it. She testified, "[j]ust a computer and paperwork, that's all." *Id*. at 106.

When Ms. Byrd was finally interviewed by police—almost two years after the shooting, and within weeks of Tracy Jordan's trial (*id*. at 114)—Ms. Byrd told detectives that on the Saturday before the shooting she was in charge of closing the store, and that prior to leaving, she swept the front area of the store and picked up the trash. *Id*. at 107-109. She testified that she and a coworker would "take trash outside at night when we go out, we have white bags in our hand, my co-worker and I." *Id*. at 112. Ms. Byrd could not account for why a third trash bag was also lying on the store's floor. *Id*. at 113. Ms. Byrd testified that she did not recall seeing a bag lying on the floor in the store area when she left. *Id*. 109.

On November 18, 2004, Tracy Jordan was interviewed by Detectives McGuffin and Gross. Ex. C, at 1. Mr. Jordan explained that he did not know Harold Wexler but had seen him at the check cashing store in the past. *Id.* at 1. Mr. Jordan stated that he was at the store on the prior Saturday before 1:00 p.m., with his three-year-old daughter, and that he had purchased lottery tickets. *Id.* at 2. Mr. Jordan was informed that his fingerprints had been discovered on a piece of evidence recovered from the scene. *Id.* He explained that on the morning of the shooting he was at home and then went to the Police and Fire Credit Union. *Id.* at 3. Mr. Jordan also informed the detectives that he owned a .22 caliber Beretta pistol and that his wife Nannette, who was a Philadelphia Housing Officer, possessed a .40 caliber Smith and Wesson. *Id.* In the footer of Mr. Jordan's statement, he drew lines through the empty space. N.T. 11/3/06, at 222-226. Detective McGuffin asked Mr. Jordan why he had crossed out the empty space, and Mr. Jordan, a former Housing Authority Officer, purportedly said, "I know how you people are." *Id*. at 225.[3]

[3] The Commonwealth suggested in closing argument that this was suspicious behavior. "I wonder why the innocent man took a pen and crossed off every bit of the bottom of that, I know the way you people are." N.T. 11/06/06, at 65

On November 24, 2004, Mr. Jordan's son, Tracy Jordan Jr., was interviewed, and explained that at 8:45 a.m. on November 15, 2004, he was sweeping up the back of his house with his father. Ex. D, at 1.

Law enforcement searched Mr. Jordan's home, and Ms. Jordan turned over her service weapon to detectives. N.T. 11/2/06, at 201. That firearm was transported to FIU for test firing and comparison. Officer McKenzie and Officer Scott of the Firearms and Identification Unit determined that Nannette Jordan's firearm matched the ballistic evidence recovered from the scene. N.T. 11/3/06, at 56. Based on the ballistic findings and the fingerprint lift from the plastic bag, Tracy Jordan was arrested and charged with the murder of Harold Wexler. Ex. E.

In late February 2006, Officer Stott, acting as a co-examiner with Officer Finor, reexamined his earlier findings. N.T. 11/3/06, at 70. Stott testified that upon further analysis he could not state to a reasonable degree of scientific certainty whether the bullet recovered from the crime scene was fired from the weapon confiscated from Mr. Jordan's home. *Id*. at 62, 67. He and Officer Finor determined that the ballistics results were inconclusive. *Id*. at 57, 59. The ballistics evidence was also examined by two civilian firearms examiners, Ken Lay and John Cannon, and they were also unable to determine whether the ballistics recovered from the scene were fired from Ms. Jordan's service weapon. *Id*. at 57.

Officer Stott testified that "[t]here were markings that would lead me to believe [the cartridge case] was fired in that type of firearm." *Id*. at 62. Officer Stott testified that he could not determine the last time Nannette Jordan's weapon had been fired (*id*. at 82) but did notice that the firearm's barrel did not contain any lubricant or lint. *Id*. at 51. Stott explained that when a firearm is fired, any lubricant or lint is burned inside the barrel. *Id*. at 48. Scott testified that he was able to determine that the shell casing found at the crime scene was manufactured on the

very same bunter as nine of the cartridges found inside Nannette Jordan's service weapon. *Id*. at 63. Based on the bunter, Stott testified that he was able to identify the manufacturing facility. He then contacted the factory, and an employee told him that they normally use a single bunter to create 120,000 to 150,000 cartridge cases. *Id*. at 46-47. Based on that phone conversation, Stott told the jury that nine of the cartridges found inside Nannette Jordan's firearm were among a group of 120,000 to 150,000 that could have been used in the crime.[4]

Staff Officer for the Philadelphia Housing, Nicholas Mancini, testified that Nannette Jordan was a PHA Officer and a .40 caliber weapon was issued to her. N.T. 11/2/06, at 160-161. Mr. Mancini testified that PHA policy mandated that issued firearms be cleaned and lubricated after range fire and prior to returning to duty. *Id*. at 164-165.

The Commonwealth also called Frank Bagley and his former fiancé, Angelina Satchell to testify about Bagley's fingerprint, which had been found on the doorhandle of the store. Angelina Satchell testified that in November of 2004 she was in a relationship with Frank Bagley. N.T. 11/3/06, at 20. During that period, Ms. Satchell and Mr. Bagley went to a jewelry store to look at rings. The jewelry store was at 80th Street and Ogontz Avenue and connected to Mr. Wexler's check chasing store. *Id*. at 22-23. Mr. Bagley's testimony echoed Ms. Satchell's testimony. *Id*. at 29-30.

Finally, the Commonwealth called Julius Peurifor, who testified that he had been friends with Tracy Jordan for nearly ten years. N.T. 11/2/06, at 129. At the time of Mr. Peurifor's testimony, police had arrested him and he was being held in custody on a two-year old bench warrant. *Id*. at 129-130. In 2004, Mr. Jordan told Mr. Peurifor that he had lost his job at a PHA Officer but was expecting some money from a civil lawsuit. *Id*. at 150. Mr. Peurifor testified that

[4] Each of the three remaining cartridges found in Nanette Jordan's weapon were created with different bunters. N.T. 11/3/06, at 63, 72.

in November 2004, he was working as a roofer (*id*. at 133) and arranged for Mr. Jordan to work with him at a site located at 3rd Street and Girard Avenue on November 15, 2004. *Id*. at 137-138. Mr. Peurifor explained that, on that day, he used his boss Christopher Rodden's cell phone to call Mr. Jordan several times from the work site, inquiring if he was coming, *id.* at 139, but Mr. Jordan never showed up. *Id*. at 141. The prosecutor interrupted defense counsel's cross-examination to tell the jury that Mr. Peurifor would also be charged for Mr. Wexler's murder. *Id*. at 149. During closing arguments, the Commonwealth repeated its claim that Mr. Peurifor was Tracy Jordan's accomplice. N.T. 11/6/06, at 68-69.[5]

The defense called Tracy Jordan, who testified that he had been a police officer for the Philadelphia Housing Authority (PHA) for thirteen years and served as PHA's union president. N.T. 11/3/06, at 137-138. In 2003, Mr. Jordan had been dismissed from the PHA force. *Id*. at 139. Subsequently, he filed a federal wrongful termination lawsuit. *Id*. at 138. Mr. Jordan also served in the Marine Corps where he was instructed on fingerprint evidence, crime scene preservation, and ballistics. *Id*. at 140-141.

Tracy Jordan testified and provided an alibi for his whereabouts on the day of the shooting. He testified that he and his family had lived on Michener Street in Philadelphia since 2001. N.T. 11/3/06, at 134. While living there, Mr. Jordan frequented local businesses including Harold Wexler's check cashing store, and would shop at the store two or three times a week. *Id*. at 134-136. The last time Mr. Jordan went into Mr. Wexler's store was on the Friday or Saturday prior to the shooting. *Id*. at 174.

Mr. Jordan testified that on November 15, 2004, he woke up at around 6:30 a.m. *Id.* at 142. Monday was a trash day, and in between 8:15 and 8:45 a.m., he and his son cleaned the

[5] Christopher Rodden's own statement directly corroborated Mr. Peurifor's testimony that he had been using Mr. Rodden's phone at the work site. Ex. Z, at 2-4.

trash up from the back of the house. *Id*. at 145-146. That morning Mr. Jordan received a call from Julius Peurifor concerning a possible job. *Id.* at 143-145. Mr. Jordan had intended on traveling to the jobsite to discuss wages with the job manager. *Id.* at 151-152. He testified that he wanted to learn more about the set up and how much he would be paid because taking the job would mean that he would have to pay $140.00 a day for daycare services for his 3-year-old daughter. *Id*. at 152. When Mr. Jordan went to 3rd Street and Girard Avenue, he did not see a jobsite. *Id.* at 185.

When Mr. Jordan could not find the jobsite, he attended to other errands. At around 10:00 a.m. Mr. Jordan went to the Police and Fire Credit Union at 9th and Arch Streets to deposit $80.00. *Id*. at 151. The Commonwealth stipulated that on November 15, 2004 Tracy Jordan made this deposit at the Police and Fire Credit Union at 9th and Arch Streets at 10:42 a.m. N.T. 11/3/06, at 124-123. Photos were introduced showing Tracy Jordan standing in line at the Police and Fire Credit Union wearing clothing that did not match the description of the shooter's clothing given by Terrance Crawford. *Id.* at 155-156; 11/02/06, at 211-212. Mr. Jordan denied having any involvement in Mr. Wexler's death. *Id.* at 161.

The Commonwealth theorized that Mr. Jordan robbed and killed Mr. Wexler because he was in need of money after losing his job as a Philadelphia Housing Authority Officer. "I want you to think about the desperate situation that the defendant was in at that time. … Think about the term the higher you are, the harder you fall. He went from being the head of a union to all of a sudden in a year and a half of not working, not making any money [.]" N.T. 11/6/06, at 57-58. The Commonwealth inferred, based on Terrance Crawford's testimony that the assailant was talking to someone prior to the robbery, and that Julius Peurifor acted as a lookout for Mr. Jordan.

> [D]o you remember what Terrance Crawford said? The bad guy ran this way, I didn't see the second person that he had been talking to, which means the other person, who I suggest to you possibly was the lookout. Why do you think Terrance said that? Why do you think the defendant – 8:42 is when the first officer got there. Why do you think 15 minutes. 16 minutes after this happened you've got these phone calls to Julius Peurifor? He calls you at 6:59 in the morning. If you had gone down there to work, wouldn't you be calling him if you're lost around 7:30, 8 o'clock? Why is it 15 minutes he's calling and saying did you get away, did anybody see you, and look at all these phone calls back and forth between the cell phone that Julius has access to and the phone calls.

Id. at 68-69.

The Commonwealth suggested that Mr. Jordan's appearance at the bank should be dismissed as a ploy to be seen on camera and create an alibi for himself. "[H]e's a smart man, he knows he has to put himself I would suggest to you somewhere on camera at a place where you're going to be least found to be suspicious." N.T. 11/6/06, at 55-56. During closing arguments, ADA Cameron made several burden shifting comments to the jury. Concerning Mr. Jordan's alibi, the ADA remarked: "Where is the son to say he's out back … The defendant's got no burden of proof in any case, but as a juror if you don't hear from somebody, you are allowed to draw inferences." N.T. 11/6/06, at 37. Then, concerning the defense not calling a ballistician, Cameron argued:

> And isn't it interesting that the defense themselves even before somebody changed their mind about this being the gun or not being the gun hired their own expert, had it examined and no written report? We haven't heard from him, and again the defendant has no burden of proof.
> MR. PAGANO: Objection.
> THE COURT: Sustained.
> MR. CAMERON: But it does cause you to wonder maybe he agrees.
> MR. PAGANO: Objection.
> THE COURT: Sustained. That's stricken.
> MR. CAMERON: Now, I wonder where the expert from Massachusetts is.
> MR. PAGANO: Objection.
> THE COURT: Sustained.
> MR. CAMERON: Those are the facts that you've got to work with in this case

Id. at 49-50.

The jury deliberated for more than two days. On the second day of deliberations the jury requested to view Terrance Crawford's videotaped testimony again and notified the court that they were "not making progress in [their] deliberations." N.T. 11/7/06, 3-5. On the final day of deliberations, the jury asked to be reinstructed on reasonable doubt and also sent a note to the court explaining that they were deadlocked and that the word "badgering" was being used. N.T. 11/8/06, at 3. That same day, Mr. Jordan was convicted of second-degree murder and was sentenced to a mandatory term of life imprisonment without the possibility of parole.

JURISDICTIONAL STATEMENT

A. Mr. Jordan meets the jurisdictional requirements and standards under the PCRA and the United States Constitution.

This Petition has been filed within one year of the time Mr. Jordan became aware of the newly discovered and withheld *Brady* evidence. Mr. Jordan's PCRA petition is timely because *Brady* evidence falls within both the newly discovered fact exception of § 9545(b)(1)(ii) and the governmental interference exception of § 9545(b)(1)(i). The timeliness requirements of the PCRA dictate that a petition must be filed within one year of the date that the judgment becomes final, unless the petitioner can establish one of three exceptions. 42 Pa. C.S.A. § 9545(b)(1). It is well-established that *Brady* violations fit into both the governmental interference and newly discovered fact exceptions to the timeliness requirements of the PCRA. *See Commonwealth. v. Johnson*, 64 A.3d 621, 622 (Pa. 2013) (finding (b)(1)(ii) exception was proved for *Brady* claims); *Commonwealth. v. Sattazahn*, 869 A.2d 529, 534 (Pa. Super. 2005) ("It is well-settled that a *Brady* violation can fall within the governmental interference exception."). The Court has rejected narrowing the "newly discovered fact" exception to "meritorious" *Brady* claims, instead explicitly holding that the exception "does not require a merits analysis of the claim in order for it to qualify as timely and warranting merits review." *Commonwealth v. Lambert*, 884 A.2d 848,

852 (Pa. 2005). In *Lambert*, the Pennsylvania Supreme Court determined that "so long as the facts set forth in the police file were not otherwise known to appellant, the *Brady* claims he asserts are 'timely' under the newly discovered evidence exception," and thus "reviewable on the merits." *Id*.

B. Mr. Jordan meets the standard under 42 Pa. C.S. § 9543.

The purpose of the Post-Conviction Relief Act (PCRA) is to prevent fundamentally unfair convictions and to provide a mechanism whereby persons convicted of crimes they did not commit, or individuals who have been serving illegal sentences, may obtain collateral relief. *Commonwealth v. Carbone*, 707 A.2d 1145, 1148 (Pa. Super 1998). A petitioner is eligible for relief if his conviction or sentence resulted from: a violation of the Constitution of this Commonwealth or the Constitution or laws of the United States; ineffective assistance of counsel; the improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court; or the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. *See* 42 Pa.C.S.A. § 9543(a)(2).

C. Mr. Jordan also meets the standard under the newly discovered evidence section of the PCRA Statute.

The PCRA's one-year time restriction may be overcome if a petitioner (1) alleges and proves one of the exceptions in Section 9545(b)(1)(i)-(iii) of the PCRA, and (2) files a petition raising this exception within one year of the date the claim could have been presented. See 42 Pa.C.S.A. § 9545(b)(2). "To qualify for an exception to the PCRA's time limitations under subsection 9545(b)(1)(ii), a petitioner need only establish that the facts upon which the claim is based were unknown to him and could not have been ascertained by the exercise of due

diligence." *Commonwealth v. Burton*, 158 A.3d 618, 629 (Pa. 2017). "The focus of this exception is on the newly discovered facts, not on a newly discovered or newly willing source for previously known facts." *Commonwealth v. Marshall*, 947 A.2d 714, 720 (Pa. 2008).

As discussed more fully in each claim, the evidence introduced herein meets the rigorous standards of Pennsylvania's PCRA statute. The evidence Petitioner has proffered fatally undermines reliability in his conviction. The failure to disclose exculpatory and material information violated Mr. Jordan's constitutional rights and warrants relief under the PCRA.

ARGUMENT

The newly disclosed documents squarely undermine each element of the case against Mr. Jordan, exposing gross misconduct that permeated his trial and resulted in a wrongful conviction. As discussed below, Petitioner has met his burden under the PCRA. He has established claims under *Brady v. Maryland* and its progeny and *Napue v. Illinois* and is entitled to PCRA relief in the form of a new trial and his release from custody. Due process under the United States Constitution requires that his conviction be vacated.

RELEVANT LEGAL STANDARDS

A. *Brady v. Maryland*

The law governing *Brady* violations is "well-settled." *Lambert*, 884 A.2d at 853. In *Brady*, the Supreme Court held that the government violates due process rights of a criminal defendant when it suppresses favorable evidence regardless of its good or bad faith. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The prosecution's duty to disclose such evidence is mandatory even if there is no request by the defense. *United States v. Agurs*, 427 U.S. 97, 107 (1976). This duty to disclose includes both impeachment evidence and exculpatory evidence, and

extends to evidence in the files of local law enforcement agencies in the same government bringing the prosecution. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

The materiality standard for *Brady* violations dictates that "favorable evidence is material, and constitutional error results from its suppression by the government, if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Kyles*, 514 U.S. at 433. The materiality prong of *Brad*y does not require demonstration by a preponderance of the evidence that disclosure of the suppressed evidence would have resulted in acquittal. *Id*. at 434. Rather, the question is whether the government's evidentiary suppression "undermines confidence in the outcome of the trial." *United States v. Bagley*, 473 U.S. 667, 678 (1985).

The Court has even acknowledged that *Brady* can be violated when "the undisclosed information may not have affected the jury's verdict." *Wearry v. Cain*, 577 U.S. 385, 392 n.6 (2016). Further, the sufficiency of the evidence is not the test for materiality. *Kyles*, 514 U.S. at 434-35 & n.8. A defendant thus "need not demonstrate that after discounting the inculpatory evidence in light of the undisclosed evidence, there would not have been enough left to convict." *Id*. Rather, a defendant need only show that the favorable evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id*. at 435. *Kyles* clarified that the materiality of undisclosed evidence should be evaluated for its cumulative effect, rather than on an individual basis. *Id*. at 436 (holding that the materiality of suppressed evidence must be "considered collectively, not item by item."); *see also Dennis v. Sec'y, Pa. Dep't of Corr.*, 834 F. 3d 263, 312 (3d Cir. 2016) (en banc). In this case, the Commonwealth's entire theory of the case is eviscerated by the *Brady* violations and prosecutorial misconduct.

The withheld evidence in this case is both exculpatory and impeaching. The cumulative effect of the withheld evidence entirely decimates the case against Mr. Jordan. The Commonwealth's duty is well established: "the prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of "reasonable probability" is reached. *Id*. at 437. The burden then shifts to the court to analyze the state's disclosure obligation on the "cumulative effect of all suppressed evidence favorable to the defense, not on the evidence considered item by item." *Bagley*, 473 U.S. at 675, n. 7.

B. *Napue v. Illinois*

A criminal defendant's right to due process is violated when a prosecutor presents testimony or evidence that they knew or should have known was actually false and material to the verdict. *See Napue v. Illinois*, 360 U.S. 264, 269-27; *see also Agurs*, 427 U.S. at 103; *Alcorta v. Texas*, 355 U.S. 28, 31-32 (1957). The use of false evidence at trial is material and therefore requires reversal under *Napue*, if it "may have had an impact on the outcome of the trial." *Napue*, 360 U.S. at 272; *accord Bagley*, 473 U.S. at 680 (holding that knowing use of perjured testimony is material unless it is harmless beyond a reasonable doubt).

In circumstances where the prosecutor knowingly conveys, or fails to correct, false information to the jury, in violation of its obligations under *Giglio* and *Napue*, an even more defense-friendly materiality standard applies. In this situation, the proper materiality standard is that of *Bagley*, 473 U.S. at 678-79, n. 9, and *Agurs*, 427 U.S. at 103, which require the Commonwealth to show that the error is harmless beyond a reasonable doubt. *Haskell v. Superintendent, Greene SCI*, 866 F. 3d 139, 141, 146 (3d Cir. 2017) (petitioner entitled to relief when he shows a reasonable likelihood that the prosecutor's knowing use of false testimony

could have affected the jury); *see also United States v. Alzante*, 47 F. 3d 1103, 1110 (11th Cir. 1995) (quoting *Agurs*) (when the prosecutor knowingly conveys false information to the jury, the falsehood is material "if there is any reasonable likelihood" it "could have affected the judgement of the jury," requiring the State to show "harmless[ness] beyond a reasonable doubt"); *Jackson v. Brown*, 513 F. 3d 1057, 1076 (9th Cir. 2008) (although *Napue* does not create a per se rule of reversal, "if it is established that the government knowingly permitted the introduction of false testimony reversal is virtually automatic").

C. Tracy Jordan meets the standard under 42 Pa. C.S. § 9543.

The purpose of the Post-Conviction Relief Act (PCRA) is to prevent fundamentally unfair convictions and to provide a mechanism whereby persons convicted of crimes they did not commit, or individuals who have been serving illegal sentences, may obtain collateral relief. *Commonwealth v. Carbone*, 707 A.2d 1145, 1148 (Pa. Super 1998). A petitioner is eligible for relief if his conviction or sentence resulted from: a violation of the Constitution of this Commonwealth or the Constitution or laws of the United States; ineffective assistance of counsel; the improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court; or the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced. *See* 42 Pa.C.S.A. § 9543(a)(2). As discussed more fully in each claim, the evidence introduced herein meets the rigorous standards of Pennsylvania's PCRA statute. The evidence Petitioner has proffered fatally undermines reliability in his conviction and warrants relief under the PCRA.

OVERVIEW OF NEWLY DISCLOSED EVIDENCE AND RELATED CLAIMS

In March of 2024, the Commonwealth disclosed its file to undersigned counsel, and in April of 2024 the Commonwealth disclosed the results of new forensic testing. The file reveals that the Commonwealth failed to disclose a number of documents in violation of *Brady v. Maryland*, severely undermining Mr. Jordan's conviction. The new testing excludes Tracy Jordan's wife's service weapon as the source of the bullet, eliminating a fundamental element of the Commonwealth's case.

A. Evidence that Harold Wexler was a cooperating informant in a Federal money laundering case.

1. The Commonwealth suppressed law enforcement's notes detailing Mr. Wexler's cooperation with federal prosecutors and immediate outreach by the FBI and IRS after his murder. [6]

Almost immediately after his murder, detectives heard from multiple sources that Mr. Wexler was an informant in an ongoing federal prosecution in which he had negotiated a plea bargain. On the very day of Mr. Wexler's murder detectives "received calls from IRS Agent Greg Floyd [] + FBI Agent Jeff Gray that Wexler convicted of money laundry [sic] recently, sentenced to 8 mos prison 8 mos house arrest, now cooperating witness. A.U.S.A. Peter Hardy." Ex. T.

Another note lists "Family Attorney – Jerry Rosenberg" and "Dec'd laptop?? Dec'd being FBI witness." Ex. I. And an additional undisclosed message for Lt. Maum from Attorney Jerry Rosenberg, dated 11/16/04, reads "question about a laptop computer supposedly carried by dec'd. Dec'd being FBI witness." Ex. K, at 2.

[6] Under order of the United States District Court for the Eastern District of Pennsylvania and at the request of the United States Attorney's Office for the protection of others involved, several of these exhibits have been filed under seal.

2. The Commonwealth suppressed federal pleadings revealing Mr. Wexler had recently been convicted and sentenced for structuring, and had received a downward departure for his extensive cooperation with investigators.

After learning of Harold Wexler's murder, federal prosecutors filed an *ex parte* motion to unseal and provide local law enforcement officials with several documents related to Mr. Wexler's cooperation, in order to aid the investigation of his murder. Ex. G. Prosecutors moved to disclose the documents, including the downward departure sentencing motion, to law enforcement. *Id*. at 3-4. The motion concluded with a specific request to disclose the aforementioned materials to Lieutenant Joseph Maun and Sergeant Robert Kuhlmeier of the Philadelphia Police Department. *Id.* at 4.

In addition to the motion to unseal the files, federal prosecutors ultimately faxed three documents to Lt. Maum: their original motion to seal documents related to Mr. Wexler's sentencing, the proposed order for downward departure in Mr. Wexler's sentencing, and his sentencing memorandum. Ex. H, F. These documents were in the police homicide file, and in the exclusive possession of the Commonwealth.

B. The Commonwealth withheld the existence of two witnesses with knowledge of the illegal activities occurring at Cash Plus, as well as Harold Wexler's criminal involvement.

Newly disclosed notes reveal that Juanette Williams told detectives that Mr. Wexler was also involved in an illegal numbers operation scheme operated by Cash Plus. Ex. T. In the same conversation, Ms. Williams told police about "K," a former manager at Cash Plus. Ex T. Law enforcement had been made aware of K through other sources as well, including another suppressed note revealing that Mr. Wexler's family "supplied info to Lt. Maum re former employee [K]??" Ex. I. The sheet of detectives' notes documenting the call is dated November 15, 2004, which is the same day of Harold Wexler's homicide.

In April of 2024, the CIU established the identity and location of "K" and interviewed her. Ex. V. In that interview, K said that she worked for Harold Wexler at Cash Plus and that she knew about Mr. Wexler's money laundering operation and that "all [the employees] got involved." *Id.* at 2. Specifically, K explained that federal authorities came to her house and told her that she should "save" herself from criminal prosecution and cooperate with them against Mr. Wexler. *Id.* K agreed and smuggled financial documents from the store relating to money transactions. *Id.* When Harold Wexler found out that she had been cooperating with federal authorities against him, he fired her. *Id.*

Petitioner raised a *Brady* claim on the basis that the Commonwealth withheld the existence of two favorable witnesses, and an after discovered evidence claim based on the CIU's recent interview with K. These new witnesses would have made for considerable defense witnesses and would have informed the jury that Cash Plus was not the average business the prosecution portrayed it to be. It was an establishment under federal investigation for serious crimes. Employees were being threatened with federal prosecution if they did not cooperate against their employer, Harold Wexler, and one was even forced to smuggle financial documents out of the business. The document smuggling evidence alone would have been significant considering that the only item stolen during the robbery was a brief case containing a laptop and documents.

C. Withheld evidence concerning suspect Warren Wright.

Approximately a week after Tracy Jordan's arrest, the police received information from a female tipper who claimed to be with Warren Wright when he robbed and killed Harold Wexler. Ex. N. The tipper added that Wright kept the murder weapon in a black bag, which aligned with Terrence Crawford's account that the gunmen wielded the weapon from a black bag. Ex. A, at 2.

The police investigated Warren Wright and were able to track him down and search his vehicle. During that search they discovered a fully loaded firearm with obliterated serial numbers. Ex. O. The police had Warren Wright's criminal record and knew he had been convicted three times of burglary and was prohibited from possessing a firearm, and yet they did not arrest him. Ex. R. The police also confiscated documentation from Wright showing that he been in within blocks of the murder scene at some point. Ex. P. The police also created a photo array containing Warren Wright's police photo and displayed it to witnesses. Ex. Q. Despite the clear exculpatory value of this evidence, none of it was disclosed to trial counsel.

D. The new forensic testing.

Based on a submission Tracy Jordan submitted to the Philadelphia District Attorney's Office's Conviction Integrity Unit (CIU), the ballistics recovered from the crime scene were compared against the firearm alleged to have been used in the crime. That investigation led to a *Brady* Disclosure explaining that the Commanding Officer of the Firearms Identification Unit (FIU) informed the CIU that, "We ran the gun through NIBIN with NO HITS. The new image hit against the old image." Ex. Y, at 1. That Officer also informed the CIU that the firearm in question was originally entered into NIBIN on February 27, 2006. *Id.* at 2. In another disclosure, the Commonwealth stated that based on the advice of the FBI, AFTE[7], and SWGGUN[8], beginning in 2010 the FIU discontinued relying on bunter marks for ballistics identification purposes. Ex. AE.

The 2006 NIBIN non-hit was never disclosed to trial counsel and would have made a significant impact on the jury's determination, resulting in a different outcome at trial. That new evidence forms the basis of two of Petitioner's claims: that the Commonwealth violated *Brady*

[7] Association of Firearm and Tool Mark Examiners.
[8] Scientific Working Group for Firearms and Toolmarks.

when it withheld the 2006 NIBIN non-hit; and a newly discovered evidence claim based on the recent NIBIN non-hit. Additionally, Petitioner has raised a newly discovered evidence claim on the basis of the new scientific evidence discrediting the reliance of bunter marks for firearm identification purposes. This new evidence would have precluded the Commonwealth from introducing expert testimony, which based on bunter marks, suggested that the ammunition found in Nannette Jordan's firearm and the cartridge found at the crime scene were within a group of 120,000 cartridges. This was a significant issue at trial, and its absence would have resulted in a different trial outcome. Petitioner has attached an expert report supporting all three of these claims as well as *Brady* disclosures from the Commonwealth. *See* Exhibits X, Y, and AE.

D. The sole eyewitness was provided with undisclosed favorable treatment.

Newly disclosed files show that the Commonwealth was aware that Terrance Crawford was struggling with substance abuse and offered him housing and healthcare assistance prior to his testimony at Mr. Jordan's preliminary hearing. *See* Ex. AA-AD. This evidence was never provided to trial counsel and would have affected the jury's determination. Although Terrence Crawford never identified Tracy Jordan as the man who committed the robbery, he did later shade his testimony to avoid contradicting the Commonwealth's theory. In particular, Crawford testified the shooter looked to be thirty-nine years old—the exact age of Tracy Jordan, while also stating that he had not been able to get a good look at the assailant's face. N.T. 3/15/05, at 21, 43. Counsel would have used the favorable treatment to impeach Crawford's credibility. This new evidence of favorable treatment especially warrants relief when considered cumulatively with all the *Brady* claims raised in the instant petition.

CLAIMS FOR RELIEF

Claim I: In violation of *Brady v. Maryland* and Mr. Jordan's constitutional rights, the Commonwealth withheld evidence that at the time of his murder, Harold Wexler was cooperating as a confidential informant against his employees and others, including drug traffickers, in a wide-ranging federal prosecution.

The Commonwealth's case against Tracy Jordan was weak: a single fingerprint on a plastic bag and an alleged motive of being in between jobs. Despite the lack of evidence, the Commonwealth repeatedly told the jury that Mr. Jordan was the sole viable suspect. ADA Cameron emphasized that there were only two fingerprints at the scene of the crime, and thus only two suspects in the murder: Tracy Jordan and Frank Bagley. He then ruled out Bagley, by calling Bagley and his then-girlfriend, Angelina Satchell, to present an alibi for Bagley and an explanation for his fingerprint. The Commonwealth repeatedly highlighted this binary choice, bolstering the paltry evidence against Mr. Jordan by framing the case as a two–man whodunit with a simple answer. The trial prosecutor discussed the case through an analogy of a cookie theft, with the only suspects being his own son and daughter who had each left their fingerprint at the scene. "The fingerprint on the jar was my son's fingerprint, the [other] fingerprint was my daughter. Frank Bagley and the defendant. Who took the cookies?" N.T. 11/6/06, at 34.

Newly disclosed evidence reveals that while the Commonwealth claimed that Mr. Jordan was the only plausible suspect, it had a trove of evidence revealing a serious motive behind Mr. Wexler's murder. Police had learned from multiple sources that in the months leading up to his murder, Harold Wexler had been cooperating in a wide-ranging federal investigation. Newly disclosed documents reveal that just three weeks before the shooting, Mr. Wexler entered into a negotiated guilty plea related to an ongoing scheme in which his employees aided drug traffickers in laundering money through his check cashing business. Mr. Wexler, his employees and others in the check cashing business, were "structuring," or splitting large sums of money

into smaller amounts under $10,000 in order to help narcotics dealers avoid federal anti-money laundering laws and currency transaction reporting regulations and evade criminal detection. Ex. F, at 6-7. In total, the business was responsible for laundering $6.7 million in funds from illegal drug transactions across the United States and Jamaica. Mr. Wexler and his co-conspirators also committed wire fraud by falsifying Western Union records, in order to assist narcotics distributors to fraudulently send money across state lines, using fictitious names and identifying information. *Id.* Check cashing businesses are legally considered financial institutions and are heavily regulated under federal law. Committing federal financial crimes through such a business brings steep criminal and civil penalties. Mr. Wexler agreed to substantially cooperate with federal prosecutors and give information and evidence detailing the illicit activities of those involved, ultimately earning a downward departure at his sentencing. Ex. F, at 16, G, at 3, T.

The newly disclosed files reflect that in the 24 hours following Mr. Wexler's murder, the FBI, IRS, and Mr. Wexler's personal attorney all immediately notified law enforcement that he had been a cooperating federal informant, with his own attorney specifically expressing concern about Mr. Wexler's laptop, the only item taken during the robbery/homicide. None of this information was ever disclosed to Mr. Jordan, his counsel, or this Court, in clear violation of *Brady v. Maryland*, 373 U.S. 83 (1963).

A. The Commonwealth knew that Mr. Wexler was a federal informant against numerous alleged co-conspirators in a wide-ranging federal anti-money laundering prosecution, and suppressed this information.

Almost immediately after Mr. Wexler's death, law enforcement was notified of a far-ranging federal investigation into Mr. Wexler's check cashing businesses and his cooperation as a federal informant against many people, including his employees. A series of undisclosed notes in the Homicide File revealed that the FBI, IRS, and Mr. Wexler's personal attorney all

immediately connected his murder with his ongoing cooperation with federal prosecutors, and contacted Philadelphia police to alert them to his status as a confidential informant, the ongoing federal investigation, and spate of indictments. Ex. I, T. Mr. Wexler's personal attorney in particular, doggedly pursued information about Mr. Wexler's laptop, the only item taken during the homicide. *See* Ex. I, K, AG. The notes indicate that the laptop was likely connected to Mr. Wexler's cooperation with authorities. These notes were in the Commonwealth's exclusive possession and could not have been discovered previously by Mr. Jordan.

Subsequently, the United States Attorney's Office for the Eastern District of Pennsylvania moved to disclose Mr. Wexler's sealed federal docket and documents to homicide detectives.[9] Ex. G, at 2-4. Shortly thereafter, the United States District Court entered a narrow unsealing order, releasing some of the sealed pleadings only to the Philadelphia Homicide Unit, but keeping the docket sealed as to the general public. *Id.* at 1. From those unsealed pleadings, law enforcement confirmed the initial tips and learned that the government had, just weeks before Mr. Wexler's homicide, successfully moved for a downward departure in recognition of his extensive cooperation with their investigation. Ex. F, at 16. Critically, law enforcement learned that just before his murder, Mr. Wexler had provided significant information concerning his own employees' involvement in structuring transactions, in order to launder money earned from illegal drug operations in the United States and Jamaica. *Id*, at 13-16.

Mr. Wexler's cooperation was "proactive and significant." Ex. F, at 14. He provided U.S. attorneys with information and agents of ICE in an effort to identify photographs of certain undocumented immigrants believed to be present in the United States after deportation

[9] The original sealing motion reflects that the docket and documents were sealed on the grounds that if they were made public, it "*would jeopardize the government's interest in protecting a cooperating witness*." Ex. H, at 2 (emphasis added). Because of this order, they are currently being filed under seal with this Court.

subsequent to a felony. *Id.* At least one individual had already pled guilty due to the information provided by Mr. Wexler. *Id.* Recognizing the potential connection to his murder, federal prosecutors moved to unseal material, and share it with Philadelphia police, "enabling them to investigate the existence or lack of any link between the death and defendant's cooperation." Ex. G, at 3.

This is precisely the sort of information contemplated by *Brady* and its progeny. The Commonwealth's failure to disclose these documents was a clear violation of its duty under *Brady*. *See Kyles v. Whitley*, 514 U.S. 419, 438 (1995); *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001). Because of the Commonwealth's suppression, Mr. Jordan, his jury, and the Trial Court never knew of this clear motive and compelling alternative explanation for the murder. Because Mr. Wexler's federal prosecution was sealed, Mr. Jordan could not have discovered it. This information and materials came to light only when the Commonwealth disclosed its files to undersigned counsel. Until that time, these materials were within the sole possession of the Commonwealth, and the underlying information was unknowable to Mr. Jordan or his counsel.

Review of the Commonwealth's file reveals that detectives unearthed a great deal of information regarding Mr. Wexler's ongoing cooperation as a federal informant at the time of his murder, none of which were shared with prior counsel.

1. None of the documents revealing Mr. Wexler's investigation, sentencing, and cooperation were ever previously disclosed, nor could they have been previously discovered by Mr. Jordan.

The detectives' notes and the sealed federal pleadings – completely contradicting the Commonwealth's binary suspect narrative at trial and impugning its investigation – were never disclosed to counsel, and never referenced in the trial record or any prior proceeding. The federal

pleadings were unsealed in a narrow order by the United States District Court for the Eastern District of Pennsylvania and provided only to the Philadelphia Homicide Unit. The case remained sealed from the public and defense counsel. Mr. Jordan could not have previously learned of Mr. Wexler's cooperation or the investigation into him and his employees. This critical evidence was suppressed.

B. The suppressed evidence of Mr. Wexler's cooperation is favorable.

"Suppressed information is exculpatory and thus 'favorable' to the defense for *Brady* purposes when it directly contradicts the motive theory testified to by prosecution witnesses." *Mendez v. Artuz*, 303 F.3d 411, 414 (2d Cir. 2002). Favorable evidence includes exculpatory as well as impeaching evidence, and evidence used to "attack . . . the thoroughness and even the good faith of the investigation." *Kyles v. Whitley*, 514 U.S. 419, 445 (1995).

1. Counsel would have used the evidence of Mr. Wexler's cooperation with the FBI against his own employees and drug dealers to present a strong alternative theory to the jury.

Reasonably competent counsel would have marshalled the extensive evidence of Mr. Wexler's cooperation and the ongoing federal criminal investigation to establish a significant motive for his murder, and identify others who were far more likely suspects than Mr. Jordan. During the FBI's investigation into his businesses, Mr. Wexler implicated his own employees and provided the government with videotape and documentation of their fraudulent and structured transactions. These transactions involved multi-million-dollar criminal conspiracies, narcotics distributors, and wirings to individuals across-state lines and in Jamaica. Employees "assisted customers who were in the business of selling drugs to perform these wirings; the customers, with the help of tellers, used fictitious names and identifying information. . . in order to disguise the true sources and recipients of the cash being wired." Ex. F, at 7. Mr. Wexler

cooperated in both the criminal and civil federal investigation, and with various arms of law enforcement, including ICE and the IRS. Numerous individuals would have had an incentive to harm Mr. Wexler, out of revenge or to stymie his ongoing cooperation, for example to stop him before he turned over his laptop to law enforcement. Counsel would have used this evidence to shatter the Commonwealth's false binary at trial. Contrary to the Commonwealth's claim that the killer could only have been Tracy Jordan or Frank Bagley – the son and daughter in his closing argument – in reality there was another universe of suspects with a far more compelling motive to harm Mr. Wexler.

Reasonably competent counsel would have investigated and presented compelling evidence that another person was responsible, and would have argued that scenario fit better with the physical and circumstantial evidence. A drug-dealer, felon avoiding deportation, or betrayed former employee would have had a clear incentive to harm Mr. Wexler before he provided further information, physical evidence, and testimony against them in various federal financial crimes. Mr. Wexler's family attorney immediately informed law enforcement that his client had been acting as a federal informant at the time of his death. Without any prompting from law enforcement, his attorney also specifically asked police if they had located Mr. Wexler's laptop. Ex. K. Critically: *the briefcase containing the laptop was the only item taken during the homicide.*

Armed with this evidence, reasonably competent counsel would have argued before the jury that Mr. Wexler's homicide was not the result of a botched robbery in which no money was taken, but the calculated slaying of a federal informant. The Commonwealth claimed that Mr. Jordan had committed the crime, stole the laptop because: "A thief is going to take something." N.T. 11/6/06, at 62. The prosecutor continued, asserting that "[h]e wants money. The person who

did this did not know what was in [the laptop bag]." *Id.* Had the evidence been properly disclosed, counsel could have easily refuted this assertion, and argued credibly that the assailant took the laptop bag in order to destroy evidence that Mr. Wexler was providing to federal authorities. The property receipt reflects that the bag contained paperwork, Mr. Wexler's computer, several floppy disks, and a compact disc labeled "Cash Plus Taxes." Ex. J.

The Commonwealth's circumstantial and speculative theory at trial pales in comparison to this compelling evidence, relying on Mr. Jordan's temporary unemployment to claim that he had committed the homicide during an attempted robbery, and that he must have thought that the computer bag contained money. Counsel would have noted that, in contrast to the individuals involved in a criminal enterprise with Mr. Wexler, Mr. Jordan had *no* criminal record, and *no* incentive to harm him. Counsel could have used this suppressed evidence to raise a compelling alternative theory which better matched the physical evidence, and would have squarely refuted the Commonwealth's sleight of hand closing argument that shielded its weak case.

2. Counsel would have used the suppressed evidence to devastate the reliability of law enforcement's investigation.

The newly disclosed files reveal that on the day that Mr. Wexler was murdered, detectives were contacted by the FBI and other federal authorities, as well as Mr. Wexler's attorney. Ex. I, T. Each of these sources informed investigators that Mr. Wexler was an active confidential federal informant. Unsealed court documents provided to detectives by federal prosecutors further explained that Mr. Wexler had provided information inculpating his own employees. Ex. F, at 7-9, 13-14. Despite this, homicide prosecutors *did not interview a single employee* who worked in the check cashing store until more than 2 years after the murder.[10]

[10] Law enforcement's interview of Adrienne Byrd (the sole employee interview) did not address the federal investigation or *any* of the undisclosed evidence, and focused solely on whether, two

Federal prosecutors also offered that they would share interview memos with investigators, (Ex. G, at 3-4), but inexplicably detectives never requested them. The failure to interview and investigate employees, to learn who was involved and their roles in the scheme, and whether they knew that Mr. Wexler was cooperating against them, is staggering. Reasonably competent counsel would have used this to devastate the reliability and credibility of the Commonwealth's investigation. Counsel would have effectively portrayed detectives as inept or worse, highlighting how they ignored obvious leads and forwent even a basic investigation in favor of a flawed and conclusory campaign to convict Mr. Jordan.

Reasonably competent counsel would have raised law enforcement's complete failure to follow up on any of the leads presented in the documents and information provided by the FBI. Counsel would have argued that law enforcement: never identified Mr. Wexler's codefendants, never established which employees were involved, never questioned witnesses as to what information was contained on Mr. Wexler's computer, never requested any further documents from federal prosecutors (despite the explicit caution in the government's motion that such follow up might be necessary), and never investigated whether Mr. Wexler was subjected to any threats, harassment or intimidation as a result of his cooperation, especially after his recent sentencing. Reasonably competent counsel would have highlighted that police interviewed just one employee of Mr. Wexler's, Adrienne Byrd, and that that interview – conducted almost two years after the homicide – sought only to substantiate the Commonwealth's narrative concerning Mr. Jordan's fingerprint, and did not include a single question about the federal investigation and prosecution.

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years before, she had seen a plastic bag when she closed the store on the Saturday prior to the homicide. Ex. AH.

The Commonwealth's closing argument was a deceptive red herring, papering over an entirely circumstantial case and dubious motive. What the jury never knew, and trial counsel would surely have brought to their attention, was that the Commonwealth's investigative failures were legion; law enforcement failed to scratch the surface of a clear motive for Mr. Wexler's murder that was corroborated by the fact that only the laptop was taken from the scene.

3. Counsel would have used this undisclosed information to interview and cross examine store employees, including Adrienne Byrd.

Reasonably competent counsel would have also questioned Adrienne Byrd about the undisclosed structuring scheme and her involvement, her knowledge of Wexler's cooperation, and her knowledge of other employees' participation. Ms. Byrd testified that she was one of Mr. Wexler's first customers when he opened his store, and that he later hired her: "we became friends, employers, and confidants." N.T. 11/2/06 at 101. Ms. Byrd worked for Mr. Wexler for three years prior to his murder, including the span of his cooperation with federal authorities. *Id.* at 101, Ex. F, at 5-6, 15. She was the only other person with a key to the store in which he was murdered, and she coordinated with Mr. Wexler about cash levels at his stores. *Id.* at 107, 110-11. Had the suppressed evidence been properly disclosed, reasonably competent counsel would have immediately identified Ms. Byrd as a direct and critical witness – and possible participant – in the money laundering operation and resultant federal prosecution.

Counsel would have questioned Ms. Byrd about her knowledge of and involvement in the wire fraud and money laundering. He would have asked Ms. Byrd about which employees were implicated in the scheme, and who might have had knowledge of Mr. Wexler's cooperation as well as his whereabouts on the morning of his murder. This evidence would have completely reshaped defense counsel's cross examination and argument. *Dennis v. Sec'y, Pennsylvania Dep't of Corr.*, 834 F.3d 263, 311 (3d Cir. 2016). ("Alterations in defense preparation and cross-

examination at trial are precisely the types of qualities that make evidence material under *Brady*.").

C. The suppressed evidence is material.

The newly disclosed evidence undermines confidence in the verdict at trial and requires relief. *United States v. Bagley*, 473 U.S. 667, 678 (1985). There was no direct evidence implicating Tracy Jordan. The trial prosecutor even acknowledged that much of his own case appeared to exculpate Mr. Jordan, chalking up the numerous gaps in his theory to Mr. Jordan's experience as a veteran and law enforcement officer: "Counsel wants to suggest to you that defendant's actions were inconsistent with somebody who committed the crime, and he's exactly right. . . that is because of his background, training and experience." N.T. 11/6/06, at 62. But there was a much clearer explanation, one that did match the evidence. Mr. Wexler's extensive and ongoing cooperation with the FBI, implicating both his own employees and other criminal actors, including drug dealers, provided a compelling motive and alterative theory for his murder. Law enforcement's failure to conduct *any* investigation into this critical area fatally undermines the reliability of the investigation in this case.

In contrast, the Commonwealth's paltry case was based on the false premise that – despite the minimal evidence against Mr. Jordan – the jury should convict because it could only have been Mr. Jordan or Mr. Bagley who stole the cookie from the cookie jar. *See e.g.*, *Id.* at 35 ("So you're kind of thinking, well, I think it's Johnnie as opposed to Susie"), *Id.* at 38 ("if you're using your common sense, you're going to punish your son because you know that he did it."). The new evidence is material, as it completely refutes the Commonwealth's closing argument.

The newly disclosed evidence gravely undermines confidence in the verdict at trial. Even with the Commonwealth's failure to disclose this trove of exculpatory evidence, and its false

closing argument, the Commonwealth barely secured a conviction. The jury struggled to convict, writing multiple notes to the judge. The foreman warned of a hung jury, saying "we're heading in that direction" and told the judge that "dissenting points of views [sic] are, if anything hardening" and that "the word badgering has been used." N.T. 11/8/06, at 4-5. The reason behind the jury's hesitation is not a mystery: the case against Mr. Jordan consisted only of a transient plastic bag with a fingerprint on it and speculative notions from inconclusive and inconsistent ballistics evidence. On direct appeal, Mr. Jordan's conviction survived a sufficiency of evidence challenge on the weight of the Commonwealth's false representation that Mr. Crawford had identified Mr. Jordan. *See Commonwealth v. Jordan*, 961 A.2d 1277 (Pa. Super. Ct. 2008) ("Mr. Crawford's contradictory testimony placed Appellant at the scene and identified him as the perpetrator. . . the jury clearly found Crawford credible and appellant incredible.") In reality, Mr. Crawford repeatedly stated that he was unable to identify Mr. Jordan. N.T. 3/15/05, at 18 ("I don't know. I don't know him"), *see also id.* at 37, 43.

The Commonwealth's theory had many other flaws. It did not present a strong motive for Mr. Jordan to commit a violent murder unmasked two blocks away from his house after loitering across the street, arguing only that he needed money after losing his job, and speculating that Mr. Wexler's computer bag was taken because Mr. Jordan thought there was money in it. Surveillance tapes corroborated that Mr. Jordan was at the bank not long after the shooting, wearing different clothes than those identified by Mr. Crawford in his initial statement. N.T. 11/3/06, at 155-56. Mr. Jordan testified that he was with his son at the time of the homicide and that he had been in the check cashing store recently, which was nearby his house, thus explaining his fingerprint, the only evidence linking him to the crime. There is no doubt that had the evidence been properly disclosed, there is a "reasonable probability" that there would have been

a different outcome. *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995). The newly disclosed evidence is clearly material, especially here where "the verdict is already of questionable validity." *See Dickey v. Davis*, 69 F.4th 624, 644 (9th Cir. 2023).

With a brazen flourish, the Commonwealth highlighted its *Brady* obligations during closing argument to refute defense counsel's claim that the Commonwealth failed to stop the case even though the evidence ultimately did not implicate Mr. Jordan. "*We've got an obligation to provide evidence to the defendant, anything in the case*, but I would suggest to you that when you think about this gun, even if it does not positively match, there's more than enough evidence to link the defendant to the crime." N.T. 11/06/06, at 46 (emphasis added).

In reality, the Commonwealth had failed utterly to comply with its constitutional obligations under *Brady*. The suppressed evidence reveals that Mr. Wexler was a confidential cooperating witness for the FBI, that law enforcement was immediately approached by the FBI, IRS and family attorney with that information, that there was immediate concern about his laptop – the only item taken in the robbery – in relation to the federal investigation and prosecution, and that the Mr. Wexler had been sentenced three weeks prior, receiving a downward departure for his extensive cooperation against his own employees, customers, and drug dealers. This bombshell would have eviscerated the core of the Commonwealth's case, devastated the credibility of law enforcement's investigation, and reshaped Mr. Jordan's defense. The suppressed evidence is material. Relief is required.

CLAIM II: The Commonwealth failed to disclose evidence, in violation of *Brady v. Maryland*, that a former Cash Plus employee informed detectives about a separate illegal numbers operation at the store and identified a former manager[11] who was involved in the scheme.

On the day of Harold Wexler's homicide, his former employee, Juanette Williams, called detectives to tell them about an illegal numbers scheme operating at the check cashing store when she worked there. That same day, Ms. Williams and another individual independently told investigators about a former manager named "K."[12] Ex. I, T.

The newly disclosed notes reveal that Ms. Williams told detectives about an illegal numbers scheme operated by Cash Plus. In the same conversation, Ms. Williams told police about "K," a former manager at Cash Plus. Ex. T. Law enforcement had been made aware of K through other sources as well, including Mr. Wexler's family, who "supplied info to Lt. Maum re former employee K." Ex. I. None of this information was ever disclosed to defense counsel in violation of *Brady v. Maryland*.

In April of 2024, the Commonwealth made a *Brady* disclosure to undersigned counsel. Ex. V. The district attorney's office had identified "K" and had located and interviewed her. In the interview, K described that she worked for Mr. Wexler at Cash Plus from roughly 1997 to 2002 (*id*. at 1) and that she was aware of the money laundering occurring at the storefront. *Id*. at 2. She explained that federal authorities came to her home and questioned her about the money laundering operation, and that she cooperated with them by smuggling financial transaction documents from the store. *Id*. at 2. K stated that all of the employees "got involved" in the

[11] The name of this individual has been redacted in this petition, and any documents revealing their identify have been filed under seal, as required by the sealing order of the United States District Court for the Eastern District of Pennsylvania and at the request of the United States Attorney's Office.

money laundering that was going on at the business, and confirmed that she was never questioned by homicide detectives concerning Mr. Wexler's murder. *Id*. at 2.

A. Notes from law enforcement about illegal operations at Cash Plus were suppressed.

The detectives' notes documenting their conversations with Juanette Williams and Mr. Wexler's family were located in the Homicide file, which was in the exclusive possession of the Commonwealth. Mr. Jordan could not have previously learned of Juanette Williams' identity, the illegal numbers operation, or that multiple individuals had alerted law enforcement to the former manager, K, on the day of Harold Wexler's death. The Commonwealth knew or should have known of this critical information obtained by law enforcement. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) ("[T]he individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police.").

B. The suppressed evidence is favorable.

Reasonably competent counsel would have investigated the illegal numbers operation and the involvement of Cash Plus employees and associates. Law enforcement learned of this information on the very day of Mr. Wexler's murder. Had this evidence been properly disclosed, reasonably competent counsel would have interviewed Juanette Williams, investigated the illegal numbers scheme, as well as the involvement of K, and presented evidence of the illegal operation to undermine both law enforcement's investigation and the Commonwealth's weak theory at trial.

1. Counsel would have investigated the illegal numbers operation.

Reasonably competent counsel would have investigated and presented the undisclosed call from former employee Juanette Williams informing detectives of the illegal numbers operation that she observed while she worked at the store. This information came from a named

reliable source, a former employee, who provided police with specific information about the location of the illegal operation. Counsel would have interviewed Ms. Williams about which Cash Plus associates were involved in the illegal numbers scheme, and ascertained the operation's clientele. Ms. Williams apparently believed this information was significant, as she independently reached out to law enforcement immediately after Mr. Wexler's murder to inform them of the illegal activity. Counsel could have called Ms. Williams at trial to introduce an alternative explanation for Mr. Wexler's homicide. Her testimony would have refuted both the Commonwealth's false Jordan v. Bagley binary, and the premise that the homicide was committed in the course of an impulsive botched robbery.

Counsel would have also interviewed Ms. Williams about the federal money laundering investigation into Cash Plus and its employees, and investigated the possible overlap between the illegal-numbers operation and the structuring scheme for narcotics distributors. Any reasonably competent defense counsel would have wanted to understand the landscape of these illegal activities at the store, the connection between the illegal gambling and the money laundering, and how well-known Mr. Wexler's role as an informant was in the store and the surrounding community. Knowledge that Mr. Wexler was cooperating with federal authorities in a money laundering case would have jeopardized his safety, and caused tension with employees and customers involved in illegal betting.

Had the Commonwealth disclosed these notes in accordance with its constitutional duty, counsel would have presented this information to the jury, and investigated the information in order to identify potential alternative suspects.[13] *See Bowen v. Maynard*, 799 F.2d 593, 612 (10th

[13] Illegal numbers operations are often linked to organized crime. *See* Liddick, Don, "Mob's Daily Number: Organized Crime and the Numbers Gambling Industry," *University Press of America* (1999).

Cir. 1986) (granting habeas relief because withheld evidence of a different suspect created a "reasonable doubt" and "in the hands of the defense, it could have been used to uncover other leads and defense theories and to discredit the police investigation of the murders").

2. Counsel would have established the identity of and investigated former manager "K."

On the day of Mr. Wexler's murder, multiple people quickly gave law enforcement the name of former manager "K." Reasonably competent counsel would have investigated this lead, inquiring into her involvement in the illegal numbers operation and money laundering scheme taking place throughout Mr. Wexler's businesses. Counsel would have interviewed Juanette Williams and asked her why she named "K," whether K had ever threatened to harm Mr. Wexler, and for contact and identifying information. Counsel could have presented K to the jury as a potential alternative suspect, who was immediately fingered by those closest to Mr. Wexler.

Had the Commonwealth comported with its duty, and disclosed to counsel the information concerning "K," counsel would have undertaken the investigative steps taken by the DAO's Conviction Integrity Unit, and identified and located K. Ex. V. Counsel would have interviewed K and called her as a witness at trial. Counsel would have learned of the widespread involvement of Mr. Wexler's employees in the business's money laundering, and that federal authorities had cautioned K to "save herself" and cooperate. *Id.* at 2. Counsel would have learned that K cooperated with federal authorities against Mr. Wexler and even smuggled sensitive financial transaction documents out of the store and gave them to federal law enforcement. *Id.* Counsel would have questioned K about her dismissal from Cash Plus, and learned that she believed Mr. Wexler fired her after he realized that she was cooperating against him. *Id*. Lastly, counsel would have also established that, despite her extensive knowledge of the money

laundering scheme and potential threats against Mr. Wexler, homicide detectives never even attempted to interview K. *Id.*

Counsel would have called K at trial and asked her to detail her knowledge of the extensive money laundering operation at Cash Plus. She would have been questioned concerning the extent of each employees' involvement. Counsel would have asked K to describe her cooperation against Mr. Wexler and others at the business, as well as the proprietary financial records that she secreted from the operation. Critically, counsel would have explored whether Mr. Wexler routinely kept those types of documents in his briefcase—the only item stolen during the robbery. Counsel also would have inquired about the circumstances of K's dismissal after Mr. Wexler learned of her cooperation against him.

3. Counsel would have used the suppressed evidence to question the Commonwealth's witnesses at trial.

Reasonably competent counsel would have also used the suppressed evidence to question Mr. Wexler's employee, Adrienne Byrd, who testified at trial. Ms. Byrd, who was called by the Commonwealth, testified that she was a friend and confidant of Mr. Wexler. Had defense counsel been provided with the undisclosed evidence he would have questioned Ms. Byrd concerning her knowledge of the illegal-numbers operation, and of K. Counsel would have questioned Ms. Byrd about her involvement in the business's illegal activities, which K described as widespread among her co-workers. Counsel would have questioned Ms. Byrd whether she too was ever approached by federal authorities and asked to cooperate against Mr. Wexler or other individuals working at the storefront. Counsel would have also questioned Ms. Byrd about the records taken by K: whether she was aware that they were missing, what kind of documents they were and who they concerned, who had access to them, and whether Mr. Wexler ever kept documents of that nature in his briefcase.

Mr. Crawford could have also been questioned concerning his knowledge of the illegal-numbers operation, any threats to Mr. Wexler, whether he had been approached by federal investigators, and his knowledge of former manager K.

4. Counsel would have exposed law enforcement's deficient investigation.

Reasonably competent counsel would also have used the suppressed information to undermine law enforcement's investigation, exposing their complete failure to follow up on Ms. Williams' information about the illegal-numbers operation, or on the early and repeated identification by multiple sources of K. The Homicide File indicates that law enforcement never formally interviewed Ms. Williams, never conducted an investigation into the numbers scheme, and never investigated, interviewed or even identified "K." This is despite the fact that K was immediately named by multiple sources, and had knowledge of the money laundering and resultant federal prosecution, the illegal-numbers operation, and may have had a motive to harm Mr. Wexler or been aware of others who did.

Reasonably competent counsel would have presented these overwhelming failures to the jury. Counsel would have argued persuasively that law enforcement's failure to take even these basic steps was further evidence that once the Commonwealth had set its sights on Tracy Jordan, it was unwilling to explore a plethora of powerful evidence that pointed elsewhere—even as its initial evidence against Mr. Jordan proved to be false. Overwhelming evidence pointing to other suspects with clear motives were never pursued, instead, the Commonwealth pushed forward with its speculative, circumstantial case against Tracy Jordan.

C. The suppressed evidence is material.

The case against Tracy Jordan survived on the Commonwealth's insistence that there was a total absence of other credible theories or suspects. The only witness, Terrance Crawford,

could not identify Mr. Jordan and so the Commonwealth relied on speculation and hypothetical arguments. The Commonwealth claimed that Mr. Jordan had committed the robbery/homicide because he was in between jobs, but the only item taken from the check cashing store was a laptop bag, the contents of which were later found in the Schuylkill River. Mr. Jordan lived only two blocks from the check cashing store and he presented a consistent alibi. The jury nearly deadlocked and only reached a verdict after three days of deliberations.

In short, the case against Mr. Jordan was weak. It inched over the finish line in a vacuum of false information constructed by the Commonwealth, in which only Mr. Jordan or Frank Bagley could have possibly been responsible for Mr. Wexler's murder. In its files, however, was a wealth of evidence revealing how deceptive the Commonwealth's false theories really were. Mr. Jordan, his counsel, the jury, and the Trial Court never knew that there was copious evidence indicating that someone else, with a far more compelling motive, was likely responsible for Mr. Wexler's death. Only the Commonwealth knew that the check cashing store was a hotbed of criminal activity, and that an employee and a member of Mr. Wexler's family had identified the same potential suspect shortly after his death. This suppressed evidence is material. There is no doubt that these new law enforcement documents, considered independently or in concert with the other undisclosed evidence, undermine confidence in the verdict at trial. Relief is required.

Claim III: Tracy Jordan is entitled to a new trial under Pa. C.S.A. § 9543(a)(2)(vi) based on the newly discovered evidence of Harold Wexler's cooperation and federal criminal charges related to money laundering at Cash Plus, provided by former employee "K."

On April 19, 2024, the Commonwealth disclosed to undersigned the contents of an interview it had conducted with "K" (Ex. V), a person of interest named in recently disclosed detective notes. Ex. I, T. According to the *Brady* disclosure, K told attorneys for the Commonwealth that she had worked at Harold Wexler's check cashing store Cash Plus for

approximately five years, from approximately 1997-2002. Ex. V, at 1. She explained that everyone knew Mr. Wexler in the community and that the store was in a "bad neighborhood" and that the store's security cameras usually did not work. *Id*. at 2-3.

K confirmed that there was an extensive money laundering scheme taking place at Cash Plus and that employee involvement was pervasive. *Id.* at 2. She recalled that prior to Mr. Wexler's death, federal agents came to her home and advised her to "save herself" by bringing them documentary proof of the money laundering operation. *Id.* She relayed that she was scared, but agreed to do so. K smuggled financial records concerning money transactions, hiding them "under her bed for three months" before providing them to the federal prosecutors. *Id.* She explained that her husband went with her when she met with the federal prosecutors and that he was very upset. After Harold Wexler found out that she had been cooperating with federal authorities, he fired her. She confirmed that she was never interviewed by police concerning Harold Wexler's death. *Id.*

42 Pa. C.S.A. § 9543(a)(2)(vi), allows a petitioner to assert a claim alleging "the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." To establish such a claim, a petitioner must prove that "(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict." *Commonwealth v. D'Amato*, 856 A.2d 806, 823 (2004).

Petitioner meets all of these prongs. The new evidence provided by K could not have been discovered through reasonable diligence as her identity was never known to Mr. Jordan. The evidence is not cumulative of any of the evidence introduced at trial. The widespread money

laundering operations at Cash Plus—the store where Mr. Wexler's murder occurred—was never an issue at trial, and never known to Mr. Jordan. Instead, the Commonwealth portrayed Cash Plus as an average small business, void of legal trouble and danger, and Mr. Wexler as an ordinary small business owner, a man with no apparent enemies and a great relationship with his employees. N.T. 11/6/06, at 70-71. Adrienne Byrd, the only employee who took the stand, testified that she was not only Mr. Wexler's employee but his good friend and confidant. N.T. 11/2/06, at 101. The jury never learned that there were employees, many of whom were involved in illegal activities through the business, that had a clear motive to harm Mr. Wexler.

This new evidence would not have been used solely for impeachment purposes, and would have likely changed the outcome of the case. When evaluating whether a petitioner has established by a preponderance of the evidence that the after-discovered evidence would likely produce a different verdict, a court should consider the factors: (1) the prosecution's theory at the original trial, and the difficulty of making this argument in light of the new evidence; and (2) the prosecutor's closing remarks, which may demonstrate the importance of the new evidence. *See Commonwealth v. Payne*, 210 A.3d 299, 302 (Pa. Super. 2019).

The new evidence would have radically changed the jury's perception of the Commonwealth's case. In light of the new evidence, Cash Plus is transformed from the everyday community check cashing store the Commonwealth claimed it be, to a dangerous business and hub of wide-reaching illicit operations, under investigation for wide-ranging criminal activity. The new evidence transforms Mr. Wexler's employer-relationships into tense and even threatening dynamics, and reveals that Mr. Wexler had plenty of possible enemies in his own store, including K. The new evidence would have made it impossible for the Commonwealth to present the argument that the murder could have only been committed by Tracy Jordan or Frank

Bagley—the central theme of the prosecution's closing. The Commonwealth's final words to the jury were: "Go back to that cookie jar example. Circumstantial evidence, you knew who took the cookie. You knew who took the bag." N.T. 11/6/06, at 72.

The newly discovered evidence would have also been used to undermine law enforcement's investigation. Although K had been an employee of Cash Plus, law enforcement never even attempted to interview her, despite the fact that multiple witnesses identified her to police. *See* Ex. I, T. This new evidence would have gone hand-in-glove with the defense's argument at trial that the police had tunnel vision on Mr. Jordan, and consequently failed to investigate other potential leads. The new evidence also aligns with the physical evidence from the crime scene. K revealed that, at the request of federal prosecutors, she secreted proprietary records relating to monetary transactions and delivered them to federal authorities during her cooperation against Mr. Wexler. Ex. V, at 2. This would explain why the only item stolen during the robbery was Mr. Wexler's briefcase, which contained his laptop, a compact disc labeled as the store's tax information, and documents. Ex. J.

In a prosecution where the Commonwealth's case was weak at best, the new evidence would have certainly tipped the scales compelling at least one juror to have reasonable doubt. Particularly, where the jury deliberated for three days, and struggled to reach a verdict. Mr. Jordan is entitled to relief based on this new evidence.

CLAIM IV: The Commonwealth violated *Brady v. Maryland* when it withheld evidence of alternative suspect Warren Wright.

At trial, the Commonwealth told the jury that the murder could have only been committed by one of two suspects: Tracy Jordan or Frank Bagley. Frank Bagley, whose fingerprint was found on the store's front door handle, was initially a suspect given his criminal history. However, law enforcement credited his explanation that two weeks prior to the murder,

he and his fiancée, Angelina Satchel, went to a jewelry shop that was attached to the check cashing store, and that was how his fingerprint ended up on the door. Ex. L. Angelina Satchel corroborated this account. Ex. M. Both Mr. Bagley and Ms. Satchel testified for the Commonwealth.

During closing arguments, the prosecutor provided a lengthy analogy of his two-suspect scenario with a story about his son and daughter and stolen cookies from a cookie jar. The story went that cookies that the prosecutor's wife made were stolen after dinner. His son's fingerprint was found on the cookie jar and his daughter's fingerprint was on the kitchen counter. "Frank Bagley and the defendant. Who took the cookies?" N.T. 11/6/06, at 34. His daughter ate a big meal that night to the point that her "stomach hurt kind of like Mr. Bagley whose got the job construction." *Id*. at 35. "I talked to my daughter… She says yeah, we were playing dolls. Kind of like Bagley and Ms. Angelina. They were looking at rings. You know it wasn't your daughter." *Id*. 36-37. "Let's talk to our son, that's the defendant… He says, well, I was playing with Joe -- I mean I was with my son picking up trashing out back… using your common sense, you're going to punish your son because you know that he did it. That's what this case is about." *Id*. at 38.

What the jury did not hear, and what was never disclosed, is that the police received information and investigated a far more likely suspect than both Tracy Jordan and Frank Bagley. Less than a week after Mr. Jordan's arrest, the police received information from a woman who told them that she was with a man named Warren Wright when he robbed the check cashing store on Ogontz Avenue. The woman added that Wright carried the firearm used in the robbery/murder in a black backpack. Ex. N.

Warren Wright fit the description provided by Terrance Crawford and had three prior convictions for burglary, as well as additional theft related convictions. Ex. R. Within one day of receiving the information, homicide detectives were able to track Wright down to an Upper Darby residence. Upon searching his vehicle, homicide detectives discovered a fully loaded semiautomatic firearm with obliterated serial numbers. Ex. O. Despite the discovery of the illegal firearm, Wright (a convicted felon) was not arrested. Detectives also discovered and seized a business card from H & R Block which was located only two blocks from the crime scene (Ex. P) and collected information from Wright that he frequented the area of Ogontz Avenue. Ex. S, at 1. Additionally, police created photo array containing Warren Wright police photograph to be shown to witnesses. Ex. Q, at 2.

Warren Wright's height, weight, and facial hair fit the description Terrance Crawford provided to police. Mr. Crawford's nonpublic account that the shooter brandished the firearm from "a dark-colored bag" (Ex. A, at 2) also matched the tipster's statement that Wright kept the firearm used in the murder in a black "bookbag that he carries" with him. Ex. N. Warren Wright's prior criminal history of three burglary convictions, and several theft and criminal trespassing convictions (Ex. R) also made him a far more likely suspect than Tracy Jordan, a married father of three and veteran, who was honorably discharged from United States Marine Corp and had never before been arrested.

The evidence implicating Warren Wright, a clear alternative suspect, should have been disclosed. The evidence was exculpatory and would have entirely refuted the Commonwealth's narrative that Tracy Jordan and Frank Bagley were the only suspects in the case.

Under *Brady* "the prosecution's suppression of evidence favorable to a criminal defendant violates due process when the evidence is material to guilt or punishment." *United*

States v. Risha, 445 F.3d 298, 303 (3d. Cir. 2006). "To establish a *Brady* violation, it must be shown that (1) evidence was suppressed; (2) the evidence was favorable to the defense; and (3) the evidence was material to guilt or punishment." *Risha*, 445 F.3d at 303 (citing *Brady*, 373 U.S. at 87). Courts have long recognized that "new evidence suggesting an alternative perpetrator is classic *Brady* material." *Juniper v. Zook*, 876 F.3d 551, 570 (4th Cir. 2017). *See also United States v. Jernigan*, 492 F.3d 1050, 1056-57 (9th Cir. 2007) (en banc) ("Withholding knowledge of a second suspect conflicts with the Supreme Court's directive that the criminal trial, as distinct from the prosecutor's private deliberations, be preserved as the chosen forum for ascertaining the truth about criminal accusations.")

A. Evidence of alternative suspect Warren Wright was withheld.

The Commonwealth failed to disclose *any* evidence concerning Warren Wright to counsel for Mr. Jordan at any time during the prior proceedings. Though law enforcement had investigated Wright, after apparently crediting the tip against him, this evidence was revealed only after the homicide file was disclosed to undersigned counsel. "[T]he prosecution's *Brady* obligation extends to exculpatory evidence in the files of police agencies of the same government bringing the prosecution." *Commonwealth v. Conforti*, 303 A.3d 715, 725 (Pa. 2023).

B. Alternative suspect evidence concerning Warren Wright is favorable.

Favorable evidence may include exculpatory as well as impeaching evidence, and evidence used to "attack . . . the thoroughness and even the good faith of the investigation." *Kyles v. Whitley*, 514 U.S. 419, 445. Evidence is "favorable to the accused" if the information would be "advantageous" to the defendant, *Banks v. Dretke*, 540 U.S. 668, 691 (2004), or "would tend to call the government's case into doubt," *Milke v. Ryan*, 711 F.3d 998, 1012 (9th Cir. 2013). The evidence concerning Warren Wright was favorable in that counsel would have

used it to directly refute the Commonwealth's case in several ways, and used it to affirmatively present the jury with a compelling alternative suspect.

Counsel would have used the withheld evidence to counter the Commonwealth's two-suspect scenario of Frank Bagley and Tracy Jordan. The Commonwealth purposefully created a strawman suspect in Frank Bagley, and then presented an affirmative defense of him, despite the fact that the defense never alleged that Mr. Bagley was a viable suspect. In opening arguments, the prosecutor told the jury that he wanted to be "up front" with them and explained that Mr. Bagley's fingerprint was found on the front door of the check cashing store and that they would hear from Mr. Bagley and his wife concerning when and why they were at the store. N.T. 11/2/06, at 36-37. During the Commonwealth's closing, the prosecutor instructed the jury that its job was to determine who was more likely to have committed the crime: Tracy Jordan or Frank Bagley. N.T. 11/6/06, at 34-37.

Had counsel been provided with the evidence concerning Warren Wright, he would been able to easily dismantle the prosecutor's false dichotomy, and present the jury with an actual alternative suspect. *See Grant v. Lockett*, 709 F.3d 224, 238 (3d. Cir. 2013) ("[H]ad the jury known of Moore's potential for bias, the Commonwealth's closing argument would have been deprived of its force because the jury would have had a compelling response to the Commonwealth's repeated hypothetical questions about why Moore would get on the witness stand and implicate Grant.")

Counsel would have emphasized how Warren Wright fit Terrance Crawford's description far better than Tracy Jordan did. Terrance Crawford's initial police statement given on the day of the shooting described the perpetrator as being 5'9" (Ex. A, at 2), which is the exact height of Warren Wright. An undisclosed Biographical Information Report concerning Warren Wright

noted that he had facial hair, and had previously been injured by a gunshot. Ex. S. That same report, as well as a business card seized from Wright (Ex. P), proved that although he was living twenty miles away in Upper Darby, he had recently been near the location of the check cashing store.

Warren Wright was also a repeat felon with *three* prior convictions for burglary, as well as theft and criminal trespassing convictions. Ex. R. When homicide detectives searched Wright's vehicle, a fully loaded firearm was discovered with obliterated serial numbers. Ex. O. Likewise the specifics of the suppressed tip matched the details of Terrance Crawford's statement. The tipster explained to law enforcement that she was with Warren Wright when he robbed the check cashing store and that the firearm used in the shooting was in a *black bookbag* that Wright carried with him. Ex. N. Mr. Crawford's statement explained that the shooter "had a dark-colored bag over his shoulder that he had the gun in[.]" Ex A, at 2. It was never disclosed to the public that the gunmen kept his firearm in a black bag, and so this was information that only someone with direct knowledge of the crime would know about. The withheld Wright evidence clearly qualifies as favorable evidence under *Brady*. *See Graves v. Dretke*, 442 F.3d 334, 343-44 (5th Cir. 2006) (finding a *Brady* violation where, had the defense known about the other suspect, the defense could have "persuasively argued" that the other suspect had committed the murder.)

Mr. Jordan, who is six feet tall and of a darker complexion than Warren Wright, did not fit the description provided by Terrance Crawford. A photo array containing Mr. Jordan's photograph was shown to Terrance Crawford within days of the homicide and Mr. Crawford did not identify him as the shooter. At the preliminary hearing, when Terrance Crawford was asked whether Tracy Jordan was the gunman, he answered, "I don't know. I don't know him." N.T. 3/15/05, at 18. Moreover, Tracy Jordan was a former law enforcement officer, a married father

of three, a home owner, legally licensed gunowner, an honorably discharged Marine, and had no prior arrest record.

Mr. Jordan's home, where he lived for four years, is only a few blocks away from the check cashing store where he purchased lottery tickets "two to three times a week" and was even familiar with some of the employees. N.T. 11/3/06, at 136-137. Mr. Jordan also shopped at the stores surrounding Cash Plus including the carwash across the street. *Id*. at 134-137. As highlighted by counsel during closing arguments, it strains the imagination to comprehend why someone of Mr. Jordan's background and training would commit a robbery or homicide only blocks away from his home unmasked during broad daylight. N.T. 11/6/06, at 20-21.

Additionally, Mr. Jordan voluntarily spoke with law enforcement and consented to his home being searched. Ex. C, at 5. Mr. Jordan's home was searched twice, and aside from his wife's service weapon, (which investigators could not conclude matched the ballistics evidence at the scene), no fruits of the crime were discovered. Mr. Jordan also testified as to his whereabouts on the day of the murder and presented video evidence showing that he was at the Police and Fire Credit Union shortly after the shooting wearing clothing that did not fit the description of Terrance Crawford.

The evidence concerning Warren Wright would have operated as a sword and a shield. Wright made for a better suspect than Tracy Jordan, and counsel would have made that a focal point of Mr. Jordan's defense. However, counsel would have also used the Wright evidence to fend off the Commonwealth's false pretense that the crime could have only been committed by Frank Bagley or Warren Wright.

The Wright evidence would have also impeached law enforcement's investigation while bolstering Mr. Jordan's defense that his arrest was a rush to judgment. In *Kyles v. Whitley*, 514

U.S. 419, 445 (1995), the Supreme Court made clear that evidence is material under *Brady* when the defense could have used it to "attack the reliability of the investigation." *See also Mendez v. Artuz*, 300 F.3d 411, 416 (2nd Cir. 2002) (finding suppressed evidence material where defendant could have "used suppressed information to challenge the thoroughness and adequacy of the police investigation."); *United States v. Howell*, 231 F.3d 615, 625 (9th Cir. 2000) (discussing the government's "duty to disclose evidence of a flawed police investigation.")

Armed with the Wright evidence counsel could have questioned law enforcement about why, despite eyewitness and compelling circumstantial evidence pointing to Wright as the culprit, they abruptly halted their investigation into him. Counsel would have questioned the detectives about why Warren Wright's home was never searched, why he was never questioned by detectives, and why, despite discovering him (a felon) in illegal possession of a fully loaded firearm with obliterated serial numbers, he was never arrested. Counsel would have also questioned the detectives concerning why they created a photo array containing Warren Wright police photograph, and who the array was showed to.

The fact that the tipster was willing to make a call to law enforcement about a crime that she herself was implicated in, strengthens the reliability of the tip, further undermining law enforcement's investigation in this case. Counsel would have argued this, and argued that law enforcement's abject failure to investigate the tipster further discredits its investigation in the present case.

A central theme of Mr. Jordan's defense was that the police botched the ballistics investigation and then refused to deviate from the theory that Mr. Jordan committed the crime even when retesting showed that they were wrong. As trial counsel argued:

> If nothing else, ladies and gentleman, this case should instill fear in all of us that know about this case … In February of 2006 do they free this man when they learn that the weapon that they have previously declared to be the murder weapon as being a ballistic match, do they release this man from custody? No. They continue to prosecute him.

N.T. 11/6/06, at 8. The Wright evidence supports the defense's theory that the police had tunnel vision concerning Tracy Jordan. The tip and subsequent search of Warren Wright's vehicle came less than a week after the police's botched ballistics findings and Mr. Jordan's arrest. Counsel would have argued that the police were so focused on Mr. Jordan and so unwilling to concede that they had arrested the wrong man, that they allowed the right man to evade meaningful investigation—even refusing to arrest Wright, a convicted felon, when they discovered him in possession of a fully loaded illegal firearm with obliterated serial numbers.

The Wright evidence would also have meaningfully informed counsel's pretrial investigation. Counsel would have shown Warren Wright's photograph to Terrance Crawford, Cash Plus employees, and employees of local businesses and taken other steps to investigate Wright's involvement. These avenues of investigation were foreclosed by the Commonwealth when they withheld the Wright evidence.

C. The Wright evidence is material.

Favorable evidence withheld by the prosecution is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (U.S. 1985). The touchstone of materiality is a "reasonable probability" of a different result. *Id.* The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly

shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." *Bagley*, 473 U.S. at 678. Therefore, fairness to the accused is a critical and controlling factor in evaluating *Brady's* materiality prong. *Brady's* materiality standard is not a sufficiency of the evidence test. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

The evidence against Mr. Jordan was extremely limited. The only eyewitness in the case, Terrance Crawford, testified that he did not know Mr. Jordan and provided a description of the shooter that differed from the physical attributes of Tracy Jordan. Likewise, the physical evidence from the crime scene did not strongly implicate Mr. Jordan. The ballistic evidence introduced by the Commonwealth at trial was inconclusive as to whether Ms. Jordan's service weapon corresponded with the ballistics found at the crime scene and law enforcement admitted that the initial ballistic match was false.

A valid reason existed for why Mr. Jordan's fingerprint may have been on the debris at the crime scene. Mr. Jordan lived only a few blocks from the Cash Plus and frequented the store and neighboring stores on a weekly basis. Additionally, the day of the murder was trash day and Mr. Crawford was in the process of cleaning up and emptying the trash when the store was robbed. A lack of physical evidence has always been a factor courts have considered in determining *Brady's* materiality prong. *See e.g., Williams v. Ryan*, 623 F.3d 1258, 1266 (9th Cir. 2010) ("There was also little physical evidence connecting Williams to the crime. This lends materiality to new evidence that someone else was involved—and possibly solely responsible.")

Mr. Jordan testified about his whereabouts on the day of the murder, and that testimony was corroborated by video evidence. The defense effectively challenged every aspect of the Commonwealth's case. This was illustrated by the jury's lengthy deliberations. During those deliberations the jury asked to be reinstructed on reasonable doubt and also sent a note to the

court explaining that they were deadlocked and that word "badgering" was being used. N.T. 11/8/06, at 3-4. The jury also requested to view Terrance Crawford's videotaped testimony again and notified the court that they were "not making progress in [their] deliberations." N.T. 11/7/06, 3-5. Courts have found these circumstances to be emblematic of a weak case. *Osborne v. United States*, 351 F.2d 111, 118 (8th Cir. 1965) (the "fact that the jury deliberated some sixteen hours, covering two full working days, that they requested an additional exhibit and the re-reading of the instructions, lends credence to the view that the case was a close and a difficult one."); *Daniels v. Woodford*, 428 F.3d 1181, 1209-10 (9th Cir. 2005) (two days of deliberations suggests "jury may have been influenced by mitigation evidence had it been offered.")

The Wright evidence would have clearly tipped the scales in favor of acquittal. It would have bolstered Mr. Jordan's defense that his arrest was made in haste and that detectives did not fully investigate the case and failed to consider a viable alternative suspect. It would have supported Mr. Jordan's assertion that once the botched ballistics incorrectly inculpated him, the police stopped investigating and dismissed any other theory of the case that did not involve Tracy Jordan. The Wright evidence would have walled off the Commonwealth's false contrast between Tracy Jordan and Frank Bagley as the only suspects. Moreover, the jury having heard the compelling alternative suspect evidence, would have been more likely to credit Mr. Jordan's alibi testimony. *See Fontenot v. Crow*, 4 F4th 982, 1037 (10th Cir. 2021)("If all of this information had been presented at Mr. Fontenot's trial, "[his] alibi [defense] would have been viewed in a different light.")(quoting *Bowen v. Maynard*, 799 F.2d 593, 612-13 (10th Cir. 1986)). Relief is warranted.

Claim V: The Commonwealth violated *Brady v. Maryland* and Mr. Jordan's constitutional rights when it failed to disclose that, prior to trial, it ran the ballistics evidence recovered from the scene through the National Integrated Ballistic Information Network, and it did not match Nanette Jordan's service weapon.

In the days following Harold Wexler's murder, the Commonwealth, through the Firearms Identification Unit (FIU) produced a report that declared the crime scene ballistics to match a gun belonging to Tracy Jordan's wife. Over a year later, however, pressed to perform the analysis again, the Commonwealth was unable to reproduce the initial ballistics match that prompted Tracy Jordan's arrest. Several reexaminations, performed at the behest of the Commonwealth, failed to yield a definitive result, but the Commonwealth still marched forward. At trial, the Commonwealth strained to transform the subsequent inconclusive findings back into a damning match. Its expert relied on an out-of-court telephone conversation about bunter marks and unreliable speculation about the absence of lint. The Commonwealth even asserted, without any supporting testimony, that the gun was so well-made that it had eluded a definitive match. N.T. 11/2/06, at 35. By the conclusion of its case, the Commonwealth was unequivocal as it addressed the jury: "I would suggest to you there should be no doubt that he's the person who took this weapon, who pointed it at Harold Wexler's head, who pulled the trigger and who killed that man." N.T. 11/6/06 at 72.

Newly disclosed evidence, that was never previously available to Mr. Jordan, reveals that the Commonwealth failed to disclose that it had confirmation that the fired cartridge case recovered at the crime scene *did not match* Nanette Jordan's service weapon. Ex. Y. The FIU knew this, because they had uploaded images of both to the National Integrated Ballistic Information Network (NIBIN), and the test did not generate a match. Ex. Y, at 1-2. Thus, Nanette Jordan's gun, the purported murder weapon, should have been at that point excluded. At

the very least, if the FIU wanted to disregard the NIBIN results, and produce an inconclusive manual comparison, the NIBIN results could have been used by defense counsel to rebut the manual comparison and argue that the ballistics were not a match. The suppressed exculpatory NIBIN analysis was favorable and material, and was withheld from the defense, the jury, and the Trial Court in clear violation of *Brady v. Maryland* and Mr. Jordan's constitutional rights.

A. The disclosed ballistics evidence.

Police arrested Mr. Jordan nine days after the homicide. At the time, investigators claimed that they had a literal smoking gun. The Commonwealth's ballistician, Officer Mackenzie, aided by FIU Officer Stott, had purportedly conclusively matched the cartridge case found at the crime scene to a test fire from Nanette Jordan's service weapon. N.T. 11/3/06, at 56. Fifteen months later, after defense counsel questioned the accuracy of this initial hit, the ballistics were tested again. This time, however, Officer Stott was unable to reproduce the initial findings, now concluding that the ballistics were "inconclusive." *Id.* at 58. A series of examinations followed. Hoping to replicate the initial match, Officer Finor and Firearms Examiner Kenneth Lay each conducted their own evaluations and each came to "inconclusive" findings. *Id.* at 57. In July of 2006, after testing ordered by Judge Renee Cardwell Hughes, the FBI also returned an inconclusive finding. Ex. W, N.T. 4/28/06, at 3, 7-8. The agency's ballisticians found that while the class characteristics of the recovered ballistics evidence and Ms. Jordan's service weapon were the same, there were slight differences in the individual microscopic marks. Ex. W.

Instead of presenting testimony that the ballistic testing was merely "inconclusive," the Commonwealth went to lengths to resuscitate its initial debunked test. It introduced the initial false match and later battery of inconclusive tests through Officer Stott. Stott told the jury that on

his own reexamination, the ballistics "lacked the minute and individual characteristics, the microscopic markings on that case *that would break the threshold* for me to decide that it was indeed fired from that firearm." N.T. 11/3/06, at 58 (emphasis added). However, Officer Stott testified that he had learned from a telephone call he had with an unnamed employee at the Federal cartridge manufacturer regarding the "bunter marks" left on the cartridge. The anonymous employee had told him that one bunter was used to make only 120,000 to 150,000. N.T. 11/3/06, at 47. Thus, based on the distinctive bunter markings left behind on both cartridge cases, he could narrow the possible cartridges used in the homicide to a range of 120,000-150,000. *Id.* at 46.

Further confirming his suspicion, Stott testified, was that he found only gunshot reside, no gunpowder, lint or lubricant, in Ms. Jordan's service weapon, and explained that given that the gun was carried in an open holster, he would have expected there to be lint in the barrel. N.T. 11/3/06, at 51-53. Stott ultimately concluded that while he could not say for sure that the ballistics were a match, "[t]here were markings that would lead me to believe [the cartridge case] was fired in that type of firearm." *Id.* at 62. The prosecutor explained to the jury that "the ballistician unfortunately because it's such a well-made gun is going to tell you it might have been used, could have been used, but he can't say for sure." N.T. 11/2/06, at 35. During its closing argument, the Commonwealth repeatedly tied the gun to Mr. Jordan. *See* N.T. 11/6/06 at 62 ("There are things about that gun, the bunter marks, no lint, the powder fouling, the different bunter marks as I said with the new rounds in there and the fact that this is consistent with being fired in that gun"); *Id.* at 65 ("I wish I could get up here and say where is [Nanette Jordan's] gun, why did you throw it away. That would be even more damning evidence, but he kept it because he knew that he couldn't.").

B. The Commonwealth failed to disclose to the defense, the Trial Court and the jury that the ballistics evidence had been uploaded to and analyzed by NIBIN and did not match.

NIBIN "is the scientifically acceptable method of conducting analysis of ballistic evidence. When images are uploaded into NIBIN, a report is automatically generated indicating any hits to ballistics evidence already in the database." Ex. X, at 9. In order to use NIBIN, firearms examiners upload 2D and 3D images of cartridge casings recovered from crime scenes or test fired from confiscated weapons into the national system. NIBIN then generates possible matches — that is, other rounds that have similar tool marks and thus may have been fired from the same gun. After a possible match, or "hit" is identified, the crime lab secures the actual spent round(s) and compares them under a microscope to confirm the hit.

Managed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the system is used by law enforcement agencies across the country to develop investigation leads and link suspects to crimes. NIBIN was established by the ATF in 1997, and by 2006 it was used regularly by law enforcement agencies in Philadelphia and across Pennsylvania.

Newly disclosed files reveal that in 2006 the Commonwealth uploaded images of the ballistics from the crime scene and from the test fire of Nanette Jordan's service weapon. Ex. Y, at 2. Critically, the system **did not return a match**. Yet the Commonwealth failed to disclose the NIBIN testing. Thus, counsel, the jury, and the Trial Court never knew that the Commonwealth had previously entered the ballistics evidence and test fire cartridge from Nanette Jordan's gun into NIBIN. Most importantly, the Commonwealth failed to disclose that it did not produce a hit or match, thus excluding Ms. Jordan's service weapon.

"[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or punishment, irrespective of the

good or bad faith of the prosecution." *Brady v. Maryland,* 373 U.S. 83, 87 (1963). The Commonwealth's duty to disclose extends to evidence in the files of local law enforcement agencies in the same government bringing the prosecution. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). At no point during the extensive reinvestigation of the ballistics evidence, or the lengthy discussion of this vital evidence at trial, was this exculpatory revelation ever disclosed to prior counsel, nor was it ever previously mentioned in the trial or appellate court record. Undersigned counsel could not have learned of this previously suppressed evidence prior to the Commonwealth's disclosure on April 12, 2024, as the FIU documentation was in the Commonwealth's exclusive possession. This critical exculpatory evidence was suppressed in direct violation of *Brady* and its progeny.

C. The suppressed evidence is favorable.

That NIBIN's automated analysis of the ballistics did not generate a "match" is significant and exculpatory. NIBIN is a reliable program routinely employed by law enforcement around the country, and is the only national network that allows for the collection and comparison of ballistics evidence. Reasonably competent counsel would have relied on the NIBIN result to easily rebut the Commonwealth's manual ballistics testing. The suppressed NIBIN exclusion would have refuted the prosecution's efforts to tie its purportedly inconclusive results to Mr. Jordan. Whether the jury believed that Ms. Jordan's service weapon was used in the murder was a decisive issue. The undisclosed NIBIN result squarely contradicts the prosecution's insistence that it was.

Critically, counsel would have moved for the dismissal of charges prior to the trial. During Mr. Jordan's preliminary hearing, Judge Renee Cardwell Hughes noted that she would wait for the FBI's ballistics report before ruling on defense counsel's motion to quash. *See* N.T.

4/28/06 at 8. ("I am not going to rule on it today. I am going to wait until I get the FBI report."). Judge Hughes expressed skepticism when the Commonwealth informed her it intended to move forward with the case in any event. *See Id.* at 7. Counsel would have used this evidence, refuting the Commonwealth's only theory, that Tracy Jordan had used his wife's service weapon, to move for dismissal of the case prior to trial.

By withholding this critical evidence excluding the supposed murder weapon, the Commonwealth was able to repeatedly emphasize otherwise before the jury. In closing arguments, the prosecutor referred to a barrage of dubious ballistics theories and hearsay from Officer Stott, and asserted that while their testing could not produce a definitive match, there was still "no doubt" that Mr. Jordan had used his wife's weapon to kill Mr. Wexler. N.T. 11/6/2006 at 72. The undisclosed NIBIN report reveals precisely the opposite. Had the crucial result been properly disclosed, reasonably competent counsel would have easily disproven this argument. Counsel would have also used the NIBIN report to undermine the FIU's repeated retesting and to counter the flawed suppositions Officer Stott presented concerning bunter evidence, lint, and gunshot residue.[14] *See Dennis v. Sec'y Pa. Dep't of Corr.*, 834 F.3d 263, 311 (3d. Cir. 2016) ("Alterations in defense preparation and cross-examination at trial are precisely the types of qualities that make evidence material under *Brady*.").The suppressed evidence is favorable, as it directly contradicts the Commonwealth's case and clearly demonstrates Mr. Jordan's innocence.

D. The suppressed evidence is material.

The newly disclosed evidence undermines confidence in the verdict at trial and requires relief. *United States v. Bagley*, 473 U.S. 667, 678 (1985). The purported ballistics evidence was at the heart of the Commonwealth's case against Mr. Jordan. There was no other reliable

[14] *See* Claim VIII.

evidence implicating Tracy Jordan, and the Commonwealth did not arrest him until it obtained its initial false ballistics match. Trial counsel argued that investigators had tunnel vision from that moment. Counsel emphasized: "[Investigators] in their haste, in their rush conclude that that was in fact the murder weapon. . . if nothing else, ladies and gentlemen, this case shows us how difficult it is to turn back the hands of time once certain things have been set in motion." N.T. 11/6/07 at 7-8. The Commonwealth responded in force:

> Now, counsel suggested to you in his closing that we made this arrest solely on the basis of the fingerprint and the gun and once the gun no longer matched, we were afraid to stop the case. That's nonsense. Any time we want to, all we have to do is stand up in front of a judge and say we move to withdraw prosecution. In fact, we have an obligation to. We've got an obligation to provide evidence to the defendant, anything in the case[.]

N.T. 11/6/06, at 46. In reality, the prosecution knew that the gun was not a match, and still did not comport with his obligation to withdraw the charges.

There was simply no other compelling evidence against Mr. Jordan. As the Commonwealth acknowledged, the sole witness to the crime, Terrance Crawford, was unable to identify him. *See* N.T. 11/6/06 at 44 ("It's clear he couldn't identify anyone"), *see also* N.T. 3/15/05, at 18 ("I don't know. I don't know him.") And the Commonwealth's purported motive—that Mr. Jordan was in between jobs—was weak and speculative.

Additionally, Mr. Jordan had a simple explanation for the presence of his fingerprint on a transient plastic-bag located at the crime scene. Mr. Jordan lived two blocks away from Mr. Wexler's storefront, and frequently visited the store to purchase lottery tickets, including recently with his daughter. N.T. 11/3/06 at 174. Mr. Jordan testified that he was at home cleaning up and taking the trash out with his son on the morning of the homicide. *Id.* at 145-46. He explained his whereabouts for the rest of the morning which were corroborated both by phone calls between and him and Julius Peurifor, whose boss Christopher Rodden confirmed that Peurifor was using

his cell phone at their worksite, and by video evidence at Mr. Jordan's bank. Ex. Z, at 2-4; N.T. 11/3/06 at 155.

The weak evidence against Mr. Jordan is borne out by the Commonwealth's struggle to establish a cohesive theory of Mr. Jordan's guilt at trial, so tenuous that it verged on paradox. It asserted that the dearth of evidence against Mr. Jordan was the result of his ingenuity as a police officer: "Counsel wants to suggest to you that defendant's actions were inconsistent with somebody who committed the crime, and he's exactly right. . . that is because of his background, training and experience." N.T. 11/6/06, at 62. When video evidence corroborated Mr. Jordan's whereabouts across town shortly after the homicide, the Commonwealth again shooed it away as evidence of a clever criminal mind. *Id.* at 56. At the same time, the Commonwealth claimed that this same man had robbed a check cashing store that he frequented with his family, two blocks away from his home – unmasked but nonetheless unidentified – and that he had not succeeded in taking any money.

The jury clearly struggled with the scant evidence, writing multiple notes to the judge expressing concern that they might be unable to reach a verdict. The foreperson's note said of hung jury, "we're heading in that direction" further explaining to the judge that "dissenting points of views [sic] are, if anything hardening" and that "the word badgering has been used." N.T. 11/8/06, at 5. Without the professed links to Ms. Jordan's weapon, there would be no case at all against Mr. Jordan. Evidence that Ms. Jordan's weapon was *not a match* is undoubtedly material. There is no doubt that the Commonwealth's failure to disclose the NIBIN exclusion "undermines confidence in the outcome of the trial." *United States v. Bagley*, 473 U.S. 667, 678 (1985). Relief is required.

Claim VI: The Commonwealth violated *Napue v. Illinois* by failing to correct the false testimony of Officer Robert Stott and instead endorsing it.

Newly disclosed evidence reveals that the Commonwealth elicited and failed to correct false and misleading testimony from Officer Robert Stott concerning the analysis and comparison of the recovered ballistics evidence against Nanette Jordan's gun, the purported murder weapon. Officer Stott explained to the jury that although his second comparison was inconclusive, "[t]here were many similarities, but we needed a little bit more than just a similarity. We needed beyond a reasonable doubt. We have to do it to a reasonable scientific certainty. We have to have a number of matching marks that would lead us to believe that it couldn't be any other firearm but the one submitted." N.T. 11/3/06, at 62. What the Commonwealth failed to disclose is that the Firearms Investigation Unit had every reason to believe that the submitted firearm did not match. When the FIU uploaded images of the ballistics recovered from the scene and from a test fire of Ms. Jordan's weapon to the National Integrated Ballistic Information Network (NIBIN), the system **did not return a match**. Ex. Y, at 1. At the outset of the case, the prosecutor told the jury that "the ballistician unfortunately because it's such a well-made gun is going to tell you it might have been used, could have been used, but he can't say for sure." N.T. 11/2/06, at 35. Then, rather than correct Officer Stott's testimony and this false assertion, which the Commonwealth knew or should have known was deceptive, the prosecutor capitalized on it in closing argument: "I would suggest to you there should be no doubt that he's the person who took this weapon, who pointed it at Harold Wexler's head, who pulled the trigger and who killed that man." N.T. 11/6/06 at 72. This refrain was false, and the myriad inconclusive ballistics evidence the Commonwealth presented only misled the jury further. There is no doubt that these misrepresentations "may have affected the judgment of the jury" and thus require relief. *Napue v. Illinois*, 360 U.S. 264, 271 (1959).

A. The Commonwealth elicited false and misleading testimony concerning its reinvestigation of the ballistics evidence.

The Commonwealth elicited testimony from its ballistics expert, Officer Stott, that despite his and others' inability to positively conclude that the ballistics matched Nanette Jordan's service weapon, he could nevertheless say that "There were many similarities but. . . We needed beyond a reasonable doubt" and then present a succession of speculative testimony to suggest that the evidence matched after all. N.T. 11/3/06, at 58. The NIBIN non-match directly contradicts his testimony, and reveals that there was a simple reason that multiple DAO examiners and the FBI had been unable to connect the ballistics from the scene to Ms. Jordan's service weapon: they did not match. The Commonwealth's inaccurate and deceptive presentation of the evidence denied Mr. Jordan a just trial and verdict. Here, the Commonwealth clearly violated *Napue* when it highlighted false testimony that was directly contradicted by exculpatory testing that was never disclosed to defense counsel.

B. The Commonwealth's repeated violations of *Napue v. Illinois* during its presentation of the ballistics evidence are material.

The Commonwealth clearly "affected the judgment of the jury" by failing to disclose the NIBIN result, and then repeatedly misrepresenting this evidence which was an essential issue at trial. *Napue v. Illinois*, 360 U.S. 264, 271 (1959). Had the jury known that the ballistics had been uploaded to NIBIN – and that the system did not return a potential match – there is no doubt they would have had fundamental doubts about the case against Mr. Jordan and questioned the integrity of the case against him.

The ballistics evidence, inconclusive as it was, remained at the core of the Commonwealth's theory. There was no persuasive evidence implicating Mr. Jordan, the sole eyewitness could not identify him, and his fingerprint on a moveable plastic bag, in a public

place near his home, would likely not have even been sufficient to sustain a verdict. *Travillion v. Superintendent Rockview SCI*, 982 F.3d 896, 906 (3d Cir. 2020). Had the prosecution not suppressed the evidence and then represented *the opposite* at trial, counsel would have forcefully argued that the NIBIN testing exculpated Mr. Jordan. This goes well beyond what is required for a *Napue* violation. Prejudice is "virtually automatic" under *Napue* precisely because of the difficulty in assessing the effect of a false assertion on the decision maker. *Jackson v. Brown*, 513 F.3d 1057, 1076 (9th Cir. 2008). In the present case, given the fragility of the case against Mr. Jordan, there exists a "reasonable likelihood" that allowing this false narrative to go uncorrected "could have affected the judgment of the jury." *United States v. Alzate*, 47 F.3d 1103, 1110 (11th Cir. 1995) (quoting *Agurs*).

The Commonwealth's inaccurate and deceptive presentation of the ballistics evidence denied Mr. Jordan a just trial and verdict. The Commonwealth secured Mr. Jordan's conviction through testimony it should have known was false, and then relied on and highlighted that same specious testimony in closing argument. *See* N.T. 11/6/06 at 72 ("I would suggest to you there should be no doubt that he's the person who took this weapon. . ."). Along with its clear *Napue* violations, it is well established that a prosecutor's closing arguments warrant relief when the comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Donnelly v. DeChristoforo*, 416 U.S. 637, 643, 94 S.Ct. 1868, 40 L.Ed.2d 431 (1974). The Commonwealth cannot show that this violation did not affect the judgment of the jury. Relief is required.

Claim VII: Recent forensic testing showing that the crime scene ballistics were not a match to Nannette Jordan's firearm, warranting a new trial under Pa. C.S.A. § 9543(a)(2)(vi).

Since the day of his arrest, Tracy Jordan has fought tirelessly to prove his innocence. One of the avenues he pursued towards that goal was a submission to the Philadelphia District Attorney's Office's Conviction Integrity Unit (CIU) requesting that his case be reviewed. In investigating Mr. Jordan's submission request, the CIU requested that the Firearms Identification Unit (FIU) compare the ballistics recovered from the crime scene against the firearm alleged to have been used in the crime through the National Integrated Ballistic Information Network (NIBIN). At the request of the CIU, the FIU took new 3D images of the ballistics—including the ballistics from the crime scene as well as the test fires from Nanette Jordan's gun—and uploaded them to NIBIN. This testing resulted in "NO HITS," meaning that Nanette Jordan's gun did not match the ballistics from the crime scene. Ex. Y, at 1.

To establish a claim of after discovered evidence, a petitioner must prove that "(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict." *Commonwealth v. D'Amato*, 856 A.2d 806, 823 (2004). The new NIBIN testing meets each of these prongs, requiring relief.

The new testing by the Commonwealth was only recently conducted and disclosed and could not have been obtained through due diligence. Mr. Jordan could not have obtained this testing on his own; NIBIN is a law enforcement investigative data collection and comparison tool that to which law enforcement has sole access. Mr. Jordan has diligently sought every

avenue of relief available to him, including asking the Commonwealth to reexamine the evidence in the case.

The new testing is also not cumulative to any evidence introduced at trial and would not have been used solely for impeachment purposes. At trial, Officer Stott testified that the ballistics initially had been a match. While he could not confirm that conclusion on reexamination (testifying that they "lacked the minute and individual characteristics, the microscopic markings on that case that would break the threshold for me to decide that it was indeed fired from that firearm,") he nonetheless testified that there "were many similarities" between Nanette Jordan's gun and the ballistics from the crime scene. N.T. 11/3/06, at 58-59. Specifically, he told the jury that, "[t]here were markings that would lead me to believe [the cartridge case] was fired in that type of firearm." *Id.* at 62. Finally, he told them that additional factors further narrowed the focus to Mrs. Jordan's gun, including that the ballistics were made with the same bunter. *Id.* at 63.

The new NIBIN testing refutes the prior FIU analysis on which Stott relied, and would have been introduced as independent evidence that Nannette Jordan's firearm did not match with the ballistics found at the crime scene.

Had the new NIBIN results been introduced at trial the outcome of the trial would have been different. The Pennsylvania Superior Court has directed that when evaluating whether a petitioner has established by a preponderance of the evidence that the after-discovered evidence would likely produce a different verdict, a court should consider the factors including: (1) the prosecution's theory at the original trial, and the difficulty of making this argument in light of the new evidence; and (2) the prosecutor's closing remarks, which may demonstrate the importance of the new evidence. *See Commonwealth v. Payne*, 210 A.3d 299, 302 (Pa. Super. 2019).

The Commonwealth's theory at trial was that Tracy Jordan, despite owning his own firearm, waited until his wife had the day off from work, took her service weapon, used it to rob and kill Harold Wexler, and reloaded the weapon and put it back. The prosecution claimed that the firearm was a near forensic match to the ballistics recovered from the crime scene. The prosecutor explained to the jury that "the ballistician unfortunately because it's such a well-made gun is going to tell you it might have been used, could have been used, but he can't say for sure." N.T. 11/2/06, at 35. Then during its closing argument, the Commonwealth repeatedly tied the gun to Mr. Jordan. *See* N.T. 11/6/06 at 62, ("[t]here are things about that gun, the bunter marks, no lint, the powder fouling, the different bunter marks as I said with the new rounds in there and the fact that this is consistent with being fired in that gun"), *Id.* at 65, ("I wish I could get up here and say where is [Nanette Jordan's] gun, why did you throw it away. That would be even more damning evidence, but he kept it because he knew that he couldn't.").

Had the jury heard that Nannette Jordan's firearm was digitally analyzed through NIBIN's automated system and rendered no match to the ballistics recovered from the crime scene, the Commonwealth's theory of a near forensic match would have been debunked. In the face of the NIBIN testing, it would have been impossible for the Commonwealth to suggest that the forensics were a near match. The Commonwealth's case was already tenuous at best. The sole eyewitness could not identify Tracy Jordan as the culprit, despite having had a conversation with the assailant shortly before the robbery. Mr. Jordan also testified that he did not commit the shooting and was not there—testimony that was supported with video evidence showing him at the Police and Fire bank shortly after the murder in a different area of Philadelphia wearing different clothing than was described by Terrance Crawford. Faced with such weak evidence, the

jury struggled for three days to reach a verdict, sending several notes to the court detailing their difficulties.

It is clear that the new ballistics evidence would have tipped the scales and altered the outcome of the trial. Mr. Jordan is entitled to a new trial on this basis.

Claim VIII: Mr. Jordan is entitled to a new trial pursuant to 42 Pa. C.S.A. §9543(a)(2)(vi), because developments in the field of firearms identification have established that the bunter evidence relied on at his trial is no longer scientifically accepted or accurate.

Tracy Jordan was arrested after his wife's service weapon was incorrectly identified as the firearm used in the murder of Harold Wexler. The Commonwealth eventually conceded that the initial ballistics testing was botched and that they could not conclusively connect her firearm to the crime. However, the prosecution argued at trial that based on "bunter marks" they could narrow the shell casing found at the crime scene and nine of the cartridges found in Ms. Jordan's weapon to a group of 120,000 to 150,000. This permitted the Commonwealth to present testimony that "[t]here were markings that would lead me to believe [the cartridge case] was fired in that type of firearm." N.T. 11/3/06, at 62.

New developments in firearms identification since Mr. Jordan's 2006 trial have established that "bunter mark" identification is not reliable for purposes of ballistics identification. Petitioner has attached an affidavit from a nationally renowned ballistics expert, Robert Tressel, outlining the unreliability of "bunter mark" for ballistics identification. Ex. X. For that reason, according to a disclosure from the Philadelphia District Attorney's Office, the Philadelphia Firearms' Unit no longer relies on bunter evidence. Ex. AE. Pursuant to 42 Pa. C.S.A. § 9543(a)(2)(vi), Mr. Jordan is entitled to a new trial based on this new evidence.

A. The ballistics evidence at trial.

At Tracy Jordan's trial, Philadelphia Firearm Unit (FIU) Ballistician Robert Stott testified that after conducting ballistics testing on Mr. Jordan's wife's service weapon, he could not determine whether that firearm fired the bullet that killed Harold Wexler. N.T. 11/3/06, at 58-59. He explained that firearms examiners John Finor, Ken Lay, and John Cannon, as well as examiners from the FBI had analyzed the ballistics and also determined that they lacked requisite identification traits that would conclusively link Nannette Jordan's firearm to the murder. *Id*. at 57, 70-73. However, Stott testified that he had also examined "bunter marks" on the fired cartridge taken from the crime scene and compared those marks with the ammunition submitted with the Nannette Jordan's firearm. Examiner Stott explained that bunter marks are found on the base of the cartridge.

> [W]hen the cartridge is being manufactured [it] is completely flat just like a flat piece of brass. The bunter will come in, punch [a] hole that this primer now sits in and it also stamps this information here. Now, when you look at it closely under magnification, you can see there's fine striations in here. These **are tool marks that are left by the manufacturing of that bunter** that are transferred onto the soft brass of this cartridge case, stamps all that information on the head of the cartridge case … They vary in size and width and dimension and these are what are left from the manufacturing of that bunter.

Id. at 44-45 (emphasis added). Stott testified that bunter marks are unique "because they're manufactured in a way that as the tool wears, those pieces are accidentally worn or irregular and they don't follow any standard type from bunter to bunter." *Id*. at 46.

Scott testified that he had concluded that the shell casing found at the crime scene was manufactured on the very same bunter as nine of the cartridges found inside Nannette Jordan's service weapon. *Id*. at 63. Based on the bunter, Stott testified that he was able to identify the manufacturing facility. He then contacted the factory, and an employee told him that they normally use a single bunter to create 120,000 to 150,000 cartridge cases. *Id*. at 46-47. Based on

that, Stott told the jury that this meant that nine of the cartridges found inside Nannette Jordan's firearm were among a group of 120,000 to 150,000 that could have been used in the crime.[15] *Id*. at 63

The employee that Stott spoke to, *and based his expert opinion on*, was unnamed and did not testify or create a report concerning the case. Nor was the defense provided with any documentation concerning Stott's discussion with the Federal representative or that employee's credentials indicating his qualifications to opine on bunters and how often they are replaced.

During opening arguments, the Commonwealth told the jury that the ballistics are "as important as anything else in this case" and that they were going to hear about "unique things" concerning the firearm "that will be relevant to determin[ing] whether or not it was used in the case." N.T. 11/2/06, at 34, 35. Then during closing arguments, the Commonwealth explained "that the shell casing that was at that scene not only was made on the same machine as nine of the bullets in there, but the same machine while it had that certain tool in it, the bunter which changes every 120,000 rounds [.]" N.T. 11/6/06, at 48.

B. Bunter mark identification is no longer a scientifically acceptable method for purposes of ballistics identification.

In April of 2024, counsel for the undersigned received a disclosure from the Commonwealth explaining that based on findings from the FBI, the Association of Firearm and Tool Mark Examiners (AFTE), and the Scientific Working Group for Firearms and Toolmarks (SWGGUN) the Philadelphia Police Department's Firearm Identification Unit (FIU) stopped using bunter marks during firearm examinations. Ex. AE.

Petitioner has also attached a report from firearms expert, Robert Tressel, who explained

[15] Each of the three remaining cartridges found in Nannette Jordan's weapon were created with different bunters. *Id*. at 72.

that the "bunter" evidence relied upon by Officer Stott is no longer scientifically accepted, and that a single bunter tool may be used to manufacture tens of *millions* of shell casings. Ex. X, 8-9.

C. Tracy Jordan is entitled to relief.

The PCRA contains an "after-discovered evidence" provision, which permits a petitioner to raise a claim based on "the unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced." To establish such a claim, a petitioner must prove that "(1) the evidence has been discovered after trial and it could not have been obtained at or prior to trial through reasonable diligence; (2) the evidence is not cumulative; (3) it is not being used solely to impeach credibility; and (4) it would likely compel a different verdict." *Commonwealth v. D'Amato*, 856 A.2d 806, 823 (2004). Petitioner meets all of these prongs.

1. The new evidence was discovered after trial and could not have been discovered through reasonable diligence.

The newly discovered evidence concerning the unreliability of bunter marks for ballistics identification purposes was not available at the time of Mr. Jordan's 2006 trial. As Robert Tressel's report (Ex. X, at 8-9) and the Commonwealth's disclosure (Ex. AE) detail, after several respected firearms identification groups, including the FBI, determined that bunter marks are not reliable for firearms identification purposes, the Philadelphia Police Department's FIU discontinued their use to identify ballistics. This determination was made after Tracy Jordan's trial.

2. The new evidence is not cumulative and is not solely impeachment evidence.

The new evidence would not have been cumulative to the evidence introduced at trial. On the contrary, it utterly refutes it. At trial, the bunter evidence introduced by the prosecution linking Nannette Jordan's firearm to the murder went essentially uncontested. The new evidence

would not have been used solely to impeach the credibility of Officer Stott, but to refute the validity of bunter evidence and preclude it in its entirely. Had the new evidence been available at the time of trial, Officer Stott's expert findings that the cartridge from the crime scene was made with the same bunter as nine of the cartridges found inside Nanette Jordan's firearm would not have been admissible. Stott's bunter findings and testimony would not have been precluded pursuant to Rule 702 of the Pennsylvania Rules of Evidence nor would it have passed *Frye's* test of "general acceptance," which controls admissibility of expert testimony in Pennsylvania. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

Both Rule 702 and the *Frye* test require that "the proponent of the evidence prove that the methodology an expert used is generally accepted by scientists in the relevant field as a method for arriving at the conclusion the expert will testify to at trial." *Grady v. Frito-Lay, Inc.*, 839 A.2d 1038, 1045 (Pa. 2003). Since bunter mark ballistic identification is no longer "generally accepted," the Commonwealth would not have met this burden, and therefore the new evidence would not have been solely used for impeachment purposes.

The new evidence would have likely compelled a different result. The ballistic identification, made possible by the bunter mark testimony, was critical to the Commonwealth's case. Expert evidence is so powerful that "expert testimony may be assigned talismanic significance in the eyes of lay jurors. . ." *United States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004); *see also United States v. Addison*, 498 F.2d 741, 744 (D.C. Cir. 1974) (expert scientific evidence may "assume a posture of mystic infallibility in the eyes of a jury of laymen"). The Commonwealth used this unreliable evidence to narrow the fired cartridge found at the scene and the cartridges contained in Nannette Jordan's firearm within a finite number of possible cartridges—120,000 to 150,000. N.T. 11/6/06, at 48. When the bunter evidence was coupled

with the fingerprint left on the bag at the scene, it made for a seemingly plausible circumstantial case for the prosecution. Even so, the jury struggled to reach a verdict. They asked to be reinstructed on reasonable doubt, and sent two notes to the Trial Court explaining that they were experiencing difficulties reaching a verdict—a struggle evident by the length of the jury's deliberations, which lasted as long as the trial.

Without the bunter evidence, the Commonwealth would have been left with a thumb print on a transient plastic bag and an unconvincing motive that Mr. Jordan was in between jobs. There was a clear and innocuous explanation for Mr. Jordan's thumb print. When the check cashing store was being robbed Terrence Crawford was in the process of cleaning up the area around the store and removing trash from behind the store to the front. The jury could have reasonably found that the plastic bags found at the crime scene were simply pieces of trash that Mr. Crawford was cleaning up and that Mr. Jordan at some point by happenstance touched them. This is particularly plausible given that Mr. Tracy and his family frequented and lived within blocks of the store, had been to the store within days of the murder, and shopped at the neighboring stores.

Legally, the fingerprint could not stand alone. In *Borum v. United States*, 380 F.2d 595, 596 (D.C. Cir. 1967) the District of Columbia Court of Appeals reversed a conviction based on fingerprints because the government "introduced no evidence indicating that the objects were generally inaccessible to Borum." The *Borum* Court noted that "to allow this conviction to stand would be to hold that anyone who touches anything which is found later at the scene of a crime may be convicted, provided he was within a mile and a half of the scene when the crime may have been committed." *Id*. at 597. Given that Mr. Jordan lived only few blocks away from the

check cashing store and was inside the store within days of the murder, the *Borum* court's analysis clearly applies.

A number of other courts have ruled similarly. In *Mikes v. Borg*, 947 F.2d 353, (9th Cir. 1991), a defendant was convicted based on his fingerprints being found on the posts at the crime scene. The *Mikes* Court found that in order to sustain a conviction based on this evidence more was needed. "In cases such as these, there must, at the very least, be sufficient evidence in the record to determine *when* the fingerprints were impressed; otherwise, any conviction would be based on pure speculation." *Id*. at 357. The Third Circuit, following the guidance of *Borum* and *Mikes*, granted habeas relief in *Travillion v. Sup't Rockview*, 982 F.3d 896 (3d. Cir. 2020). There, Travillion's robbery conviction was based on the discovery of fingerprints found on a folder. The Court found that:

> Although there is evidence that Travillion touched the folder at some indefinite time with his left hand, and there is evidence that the robber carried the folder at the time of the crime in his left hand, there is not sufficiently incriminating evidence that Travillion was the perpetrator holding the folder at the time of the crime.

Id. at 905.

The Commonwealth's overarching theme that Mr. Jordan robbed and shot Mr. Wexler in the head because he was in desperate need of money was tenuous at best. No money was taken from the store. Mr. Jordan had never been arrested, he was a married father of three, his wife worked in law enforcement, he previously worked in law enforcement, and he was an honorably discharged Marine veteran.

Without the bunter evidence introduced a trial, it is more than likely that at least one juror would have had reasonable doubt. Relief is warranted.

CLAIM IX: The Commonwealth violated *Brady v. Maryland* and *Napue v. Illinois* when it failed to disclose Terrance Crawford's drug abuse and the housing and healthcare assistance the Commonwealth offered to him prior to his taped preliminary hearing testimony.

Newly disclosed files reveal that the Commonwealth was aware that witness Terrance Crawford was struggling with substance abuse and offered him housing and healthcare assistance prior to his testimony at Mr. Jordan's preliminary hearing, which was subsequently introduced via video at trial. Mr. Crawford's testimony was of vital importance to Mr. Jordan's conviction. His assertion that the Sneaker City bag with Mr. Jordan's fingerprints on it belonged to the shooter provided the only piece of evidence which tied Mr. Jordan to the crime. In addition, his incredible insistence that he never saw the shooter's face served to cover a gaping hole in the Commonwealth's case—that despite being the sole eyewitness to the shooting, and having a conversation with the perpetrator, Mr. Crawford did not identify Mr. Jordan as the shooter.

The newly disclosed evidence reveals that the Commonwealth offered Mr. Crawford housing and healthcare prior to his preliminary hearing, and sheds light on his struggle with drug abuse. Both cast significant doubt on the credibility of his testimony and the reliability of his evolving police statements. In the absence of the newly disclosed evidence, trial counsel was left unable to counter the Commonwealth's portrayal of Mr. Crawford as a man coming forward with the truth as he lay dying in the hospital– with the reality of an incredibly vulnerable man whose health and safety depended on his satisfactory cooperation with the Commonwealth.

A. Crawford's statements and testimony.

Terrance Crawford gave his first statement to Detective Dusak at 10:20pm on November 15, 2004 – over twelve hours after the shooting and his arrival at the Homicide Unit.[16] Ex. A, at 1. He explained that he worked for Harold Wexler, and had arrived at Cash Plus at 8:30am to "put out the trash" when he was approached by an unknown man who asked if he worked there. *Id*. After Mr. Crawford denied that he worked at Cash Plus, the man walked across the street to a nearby bus stop and began talking with another unknown person. *Id*.

Mr. Wexler arrived soon after this interaction around 8:40am. Ex. A, at 1. He asked Crawford if he was okay to work given his ongoing chemo treatments for cancer and then opened the outside gate to the store. In that moment, the same man from earlier approached again, this time placing a gun to Mr. Crawford's head, and asked when the store opened. After Mr. Wexler answered that the store opened at 9:30am, the gunman said "You know what it is!" and shoved both Mr. Wexler and Crawford into the store. *Id*. Mr. Crawford told police that Mr. Wexler shoved him further into the store and out of the way, while Mr. Wexler and the gunman began "tussling," breaking the glass store windows in the chaos. *Id*. at 2. Eventually Crawford heard a gunshot, watched the gunman leave the store and start running down Ogontz "towards 87th, 86th street," and found Wexler bleeding on the floor. *Id*. Crawford gave Detective Dusak a full description of the shooter:

> He was black, about 5-8, 5-9, about your weight (210 lbs), he was wearing a black jacket….a black hoodie, a black knitted cap, he had a dark-colored bag over his shoulder that he had the gun in, he had a beard, a full beard, it was trimmed but it was bushy. He was dark skinned. He had an old-looking face. He wasn't a young buck or anything.

[16] Mr. Crawford was transported to homicide immediately following the shooting. Ex. B. It thus appears that Mr. Crawford spent over 12 hours at Homicide before detectives memorialized his first statement.

Ex. A, at 1. Mr. Crawford said that he had never seen the shooter before that day.

In this initial statement, Dusak then asked Crawford: "There are two bags in the store, a white 'sneaker city' bag and a brown bag. Do you know who owns them?" *Id.* at 3. Crawford replied "They're both the bad guy's. I guess he dropped them when him and Mister Harold were tussling." *Id*. Notably, he had only previously mentioned that the shooter was carrying a "dark-colored bag over his shoulder," (*Id*. at 2) it was Detective Dusak who first raised the Sneaker City bag found at the crime scene. *Id.* at 3.

Two days later, on November 17, 2004, Detectives Griffin and Dusak visited Mr. Crawford at Hahnemann Hospital where he was receiving chemotherapy for his cancer and took a brief second statement from him. Ex. AF. They asked if Mr. Wexler was carrying anything when he arrived at work, and Crawford told them that Mr. Wexler was carrying a black coffee cup and a brown or black briefcase. *Id*. The detectives asked when the shooter took the briefcase, and Mr. Crawford told them it must have been when Mr. Wexler and the shooter were "tussling." *Id*.

On March 15, 2005—four months after the shooting and his initial statements to police—Mr. Crawford was the sole witness to testify at Mr. Jordan's preliminary hearing. This testimony was video-recorded due to his late-stage cancer and contained a few key differences from Mr. Crawford's initial statement to police.

On the day of the shooting Crawford could only describe the shooter's age in general terms, telling Detective Dusak he had an "old-looking face" and that he "wasn't a young buck." Ex. A, at 1. At the preliminary hearing in March, however, Crawford claimed he knew the shooter's exact age, describing him as "an older guy, like 38, 39"—which just happened to be Mr. Jordan's age at the time. N.T. 3/15/05, at 21.

Not only did Crawford suddenly become more precise in his assessment of the shooter's age by the time of the preliminary hearing, he was now adamant that he had not actually seen the shooter's face. After being asked by trial counsel how close he had gotten to the shooter and telling him they had been "[r]ight face to face almost," he repeatedly denied actually looking at his face, at one point even asking, "[w]hy should I look at his face?" N.T. 3/15/06, at 24-25. ADA Cameron confirmed this denial, asking him directly: "Mr. Crawford, am I correct that you're telling us that you cannot identify the person that did this, correct?" and "You never got a good look at his face?" N.T. 3/15/06, at 43. Crawford testified that he never got a good look despite the fact that in his initial statement he told Detective Dusak that the shooter "had an old-looking face," and described his hat and beard in some detail. Ex. A, at 2; N.T. 3/15/06, at 44.

Just like in his initial statement, at the preliminary hearing Crawford did not bring up the Sneaker City bag on his own. ADA Cameron led him to his purported observation, asking if the gunman was "carrying anything else" besides the gun. N.T. 3/15/05, at 13. Thus prompted, Crawford replied that the shooter was "carrying two bags," and provided a description. ADA Cameron then acknowledged that right before the hearing, he had shown Crawford a picture of the bags. After being prompted by the judge to mark the photo in question as an exhibit, ADA Cameron asked Crawford if he recognized the bags and Crawford said "That's the bags that was left at the store." N.T. 3/15/06, at 15. ADA Cameron then asked again: "Are those the bags that the person with the gun came in with?" before Crawford confirmed, "Yes sir." N.T. 3/15/06, at 16.

B. The use of Crawford's preliminary hearing testimony at trial.

Because Crawford died over a year prior to trial on July 13, 2005, the video of his preliminary hearing testimony was played for the jury in full during Mr. Jordan's trial. His

testimony was critical to Mr. Jordan's eventual conviction. Trial ADA Cameron highlighted the significance of Crawford's testimony himself in closing: "…you should listen to those words carefully what [Crawford] had to say because he's the only witness and *is the most important piece of evidence in this case*." N.T 11/6/06, at 44 (emphasis added).

ADA Cameron used Detective Griffin to introduce Crawford's videotaped testimony at trial. After eliciting details from him regarding Crawford's cancer diagnosis and treatments, ADA Cameron asked Detective Griffin the following: "Up until he testified at the hearing he actually had been in the hospital under treatment; correct?" N.T. 11/3/06, at 116. Detective Griffin answered "*Absolutely*." N.T. 11/3/06, at 116 (emphasis added).

During his closing argument, ADA Cameron highlighted the similarities between Crawford's description of the shooter and Mr. Jordan ("…the bottom line about the details of Terrance Crawford is that they match the defendant," N.T. 11/6/06, at 44; "Other than the height, Terrance is dead on," N.T. 11/6/06, at 45; "He is dead on with the age. What did he say at the Preliminary Hearing? 38 or 39. What is the defendant? What did he say? 39 years old." N.T. 11/6/06, at 45) and Crawford's assertion that the Sneaker City bag belonged to the shooter ("…as Terrance said, the person who committed this crime carried [the bag] in." N.T. 11/6/06, at 45). The jury clearly grasped the significance of his testimony to the case, as they requested to watch the tape again in full within the first couple of hours of their deliberations. N.T. 11/6/06, at 112.

ADA Cameron also bolstered and emphasized Crawford's credibility as a witness throughout his closing argument. He waved away Crawford's failure to identify Mr. Jordan as the shooter while stressing the "match" between his description of the shooter and Mr. Jordan, telling the jury "[h]e was frightened, he hid in the corner, he was medicated, but the bottom line about the details of Terrance Crawford is that they match the defendant." N.T. 11/6/06, at 44. He

insisted that while the credibility of other witnesses (including Mr. Jordan) was in question, Crawford's was not: "[t]he only issue for Terrance is how accurate was he. You saw him on the tape and you heard him. I would suggest to you that despite his condition, other than being a couple inches off on the height, he was accurate. He's right on the weight, stocky, the complexion, and everything else." N.T. 11/6/06, at 50-51. ADA Cameron vouched for Crawford's impartiality, pointedly asking the jury: "Why would Terrance lie?" N.T. 11/6/06, at 51.

C. The Commonwealth incentivized Mr. Crawford with undisclosed benefits, including housing and healthcare, prior to his preliminary hearing testimony.

The previously undisclosed DAO file for Mr. Jordan's case contains evidence of the Commonwealth's efforts to provide Crawford with undisclosed benefits, including housing and healthcare assistance, prior to his preliminary hearing testimony. A handwritten law enforcement note in the H-File dated December 31, 2004 explains that Crawford's sister kicked him out before Christmas because of his drug use, that he had not been seen or heard from since then, and that he might be staying in a vacant house on Market Street. Ex. AA. Additional handwritten notes dated January 5[17] and January 11, 2005 document other unsuccessful attempts by law enforcement to contact Crawford, including contacts with other family members and his doctors. Ex. AC. A memo from ADA Cameron to supervisor ADA Edward McCann dated January 20, 2005 explains that Crawford has been found living in an abandoned house on Market Street and that "[i]n addition to being homeless, Crawford is drug dependent and has stopped going to chemo-therapy." Ex. AD. ADA Cameron then asks McCann to "approve short-term housing for Crawford so that we can keep tabs on him at least until after the preliminary hearing." *Id*. In a

[17] This note is dated 2004, but given the dates on surrounding notes, the dates related to the case, and the proximity to the new year, this is clearly a typographical error.

letter also dated January 20, 2005, Detective Griffin wrote to Crawford's doctors requesting his contact information and explaining his intention "to assist [Crawford] in being placed in some type of housing/care facility. Once that is accomplished I will also assist Mr. Crawford in obtaining the treatment he needs." Ex. AB. Finally, a note dated March 14, 2005 (the day before the preliminary hearing) indicates that Crawford was staying in a shelter on Ridge Avenue at that time. Ex. U.

These documents reveal that not only was the Commonwealth aware of Crawford's particular vulnerabilities prior to his testimony at the preliminary hearing (substance abuse, homelessness, untreated terminal cancer), but also that they offered to provide him with assistance with those issues before his testimony, and likely did so—all without disclosing *any* of this information to Mr. Jordan's trial counsel, nor later to his appellate or post-conviction counsel.

D. Crawford's drug abuse and the Commonwealth's promise of assistance to him undermines confidence in the verdict and amounts to violations of both *Brady v. Maryland* and *Napue v. Illinois*.

1. Evidence regarding Crawford's drug abuse, and the Commonwealth's offer of benefits in the form of housing and medical assistance, was withheld.

The documents revealing Crawford's drug abuse, as well as the inducement of housing and healthcare assistance, were never previously disclosed to Mr. Jordan's counsel and remained in the exclusive possession of the Commonwealth until the DAO and H-File were disclosed to undersigned counsel. The existence of these documents has never been disclosed or acknowledged in any past proceeding. They are not in prior counsel's file, nor anywhere in the record in this case.

2. Evidence of the assistance and drug abuse is favorable.

The documents detailing the Commonwealth's attempts to provide Crawford with housing and healthcare assistance are favorable because they could have been used to impeach Crawford's preliminary hearing testimony. *See United States v. Bagley,* 473 U.S. 667, 676 (1985). Even without direct evidence that Crawford in fact received the assistance offered, the fact that the Commonwealth offered it at all was relevant to Crawford's credibility because "[a]ny implication, promise or understanding that the government would extend leniency in exchange for a witness' testimony is relevant to the witness' credibility." *Commonwealth v. Strong*, 761 A.2d 1167, 1171 (Pa. 2000) (citing *United States v. Giglio*, 405 U.S. 150, 154 (1972)).

Many of the same undisclosed documents described above also contained assertions that Crawford was abusing drugs. This is also favorable evidence, as it could have been used by reasonably competent counsel to impeach Crawford's testimony regarding what happened that day. *See Commonwealth v. Small*, 980 A.2d 549, 570 (Pa. 2009) (noting that a jury may consider for impeachment purposes the drug or alcohol use of witnesses "regarding the time of an occurrence about which [the witness] has testified" (quotations omitted)).

The Commonwealth's failure to disclose these documents enabled them to portray Crawford's statements and testimony as that of a man with nothing to lose by telling the truth. N.T. 11/6/06, at 51 ("Why would Terrance lie?"). If the documents had instead been disclosed as required by law, reasonably competent counsel would have been able to counter that narrative with a different one—that of an extraordinarily vulnerable man, highly susceptible to coercion, whose health and safety depended on his satisfactory cooperation with the Commonwealth.

3. Evidence of the assistance and drug abuse is material.

The suppressed evidence is also material. "[I]mpeachment evidence is material, and thus subject to obligatory disclosure, if there is a reasonable probability that had it been disclosed the outcome of the proceedings would have been different." *Strong*, 761 A.2d at 1174. This reasonable probability can be shown if "the government's suppression of evidence undermines confidence in the outcome of the trial." *Commonwealth v. Bagnall*, 235 A.3d 1075, 1087 (Pa. 2020) (quotations omitted). Impeachment evidence has been considered material for *Brady* purposes when it could have been used to impeach a witness whose testimony was critical to the government's case. *See, e.g., Bagnall*, 235 A.3d 1075 (Pa. 2020) (suppressed impeachment evidence against the sole eyewitness to the crime whose testimony refuted defendant's self-defense claim was favorable and material); *Commonwealth v. Conforti*, 303 A.3d 715, 730-31 (Pa. 2023) (suppressed impeachment evidence against the Commonwealth's key witness at trial, without whose testimony the Commonwealth's case was "entirely circumstantial," was favorable and material).

Crawford was the Commonwealth's only witness. During closing argument, the Commonwealth explained, "he's the only witness and is the most important piece of evidence in this case." N.T. 11/6/06, at 44. Crawford was the sole eyewitness to the shooting and his testimony and statements provided the *only* evidence of a connection between the shooter and the Sneaker City bag containing Mr. Jordan's fingerprints. Those fingerprints, without the credit given to Crawford's testimony that the bag belonged to the shooter, would certainly have been insufficient to sustain a guilty verdict against Mr. Jordan. *See*, *e.g.*, *Travillion v. Superintendent Rockview SCI*, 982 F.3d 896, 904-05 (3d Cir. 2020) (fingerprints found on easily movable objects in a public space, in the absence of sufficient additional incriminating evidence, found

insufficient to support a finding of guilt beyond a reasonable doubt); *Rayner v. Superintendent Forest SCI*, 2023 WL 1433610, at *2 (3d Cir. Feb. 1, 2023) (DNA evidence found on a t-shirt at the crime scene, without further establishing when the DNA was left on the shirt and in the absence of additional incriminating evidence, found insufficient to sustain a guilty verdict); *cf. Commonwealth v. Donohue*, 62 A.3d 1033, 1037-38 (Pa. Super. Ct. 2013) (insufficiency of evidence claim denied because the burglary defendant lacked any innocent explanation for the presence of his fingerprints on a bottle located in a private residence).

The remaining evidence against Mr. Jordan was extraordinarily thin, and the jury understood the importance of Crawford's testimony. They requested to watch it in full for a second time just a few hours into their deliberations. N.T. 11/6/06, at 111. They had a great deal of difficulty coming to a decision, spending nearly as much time deliberating as the parties spent presenting the evidence. In addition to asking to see Crawford's testimony again, they sent notes to the judge two separate times explaining that they were "not making progress in [their] deliberations," N.T. 11/7/06, at 4, that "dissenting points of view are, if anything, hardening," and that jury members were accusing each other of "badgering." N.T. 11/8/06, at 3. These notes also requested reinstruction on the definition of reasonable doubt and the difference between second and third-degree murder. N.T. 11/8/06, at 4, 9. Suppressed evidence revealing the Commonwealth's incentivization of Mr. Crawford and his drug abuse is material. Relief is required.

4. The Commonwealth knowingly elicited false testimony regarding Crawford's life circumstances during trial and failed to correct it.

A defendant is denied due process when a witness falsely testifies and the Commonwealth knows the testimony is false but does nothing to correct it. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). As the Court explained in *Napue*, "[t]he jury's estimate of the truthfulness

and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Id*.

Not only did the Commonwealth suppress the documents revealing both their knowledge of Crawford's drug abuse and their attempts to assist Crawford with housing and healthcare, it also elicited and failed to correct false testimony from Detective Griffin. ADA Cameron asked Detective Griffin, "[u]p until [Crawford] testified at the hearing he actually had been in the hospital under treatment; correct?" N.T. 11/3/06, at 116. The truthful answer to this question was no; previously undisclosed files reveal that Crawford had been missing and unhoused in the months leading up to the preliminary hearing, and that detectives knew that he had not been receiving his cancer treatments during this time. Nevertheless, when Detective Griffin falsely answered "Absolutely," *id*., the Commonwealth did nothing to correct him.

The lie served to boost Crawford's credibility, painting a false picture of a witness who was in the hospital, receiving treatment before coming to court to testify against Mr. Jordan. The truth—that Crawford had been kicked out of his sister's house due to his drug abuse, that he was missing for months, that he was unhoused during those months and staying at a shelter immediately prior to his preliminary hearing testimony—would have affected how much credit the jury gave to Crawford's testimony in assessing Mr. Jordan's guilt.

Under *Napue*'s lower materiality standard, the use of false evidence at trial requires reversal if it "may have had an impact on the outcome of the trial." *Napue*, 360 U.S. at 272; *accord Bagley*, 473 U.S. at 680 (holding that knowing use of perjured testimony is material unless it is harmless beyond a reasonable doubt).

The Commonwealth elicited and failed to correct false testimony from Detective Griffin that affected the jury's ability to assess the credibility of Crawford's testimony, including his vulnerability to possible incentivization as well as the reliability of his memory due to drug abuse and the stress of his chaotic life circumstances. This false testimony clearly "may have had an impact on the outcome at trial," especially in light of the utter weakness of the evidence against Mr. Jordan, and the jury's prior struggle to reach a verdict. Relief is required.

CLAIM X: Considering Petitioner's *Brady* claims individually or cumulatively, there is reasonable probability that the outcome of the trial would have been different.

"The materiality of withheld evidence must be 'considered collectively, not item by item.'" *Dennis v. Sect' of Pa. Dept' of Corr*., 834 F.3d 263 (3d. Cir. 2016) (quoting *Kyles*, 514 U.S. at 436). Here, considering the extensive suppressed evidence individually and cumulatively as required by *Kyles*, there is a reasonable probability that the outcome of the trial would have been different had the evidence been disclosed.

Collectively, the suppressed evidence decimates every aspect of the Commonwealth's tremendously weak case and proves what Mr. Jordan has said since his arrest in 2004: that he did not kill Mr. Wexler. The court documents and notes concerning Harold Wexler's status as an FBI informant and federal criminal defendant, who provided the government with critical evidence against his employees and drug traffickers just weeks prior to his murder (*See* Exhibits F-H), and who owned a business engaged in "illegal" numbers-operations (Ex. T), must be reviewed collectively with the withheld evidence implicating Warren Wright (*See* Exhibits N-Q, S). Individually and cumulatively, the suppressed evidence paints an entirely different picture than the one the jury saw, and wholly undermines the reliability of Mr. Jordan's conviction.

At trial, the Commonwealth portrayed Cash Plus as an ordinary small business, and Mr. Wexler as an ordinary business owner, a man who had no apparent enemies and a great relationship with his employees. N.T. 11/6/06, at 70-71. Adrienne Byrd, the only employee who took the stand, testified that she was not only Mr. Wexler's employee but his good friend and confidant. N.T. 2/6/06, at 101. The jury did not hear that there were employees that had a clear motive to harm Mr. Wexler, including those that he had given evidence against, and was continuing to incriminate in a money laundering scheme related to drug transactions across the United States and Jamaica. *See* Exhibits F-H, V.

The jury did not hear that Mr. Wexler's business, the establishment he was killed in, was involved in a number of illegal activities that may have attracted criminals such as Warren Wright. They did not hear that a tipster placed herself at the check cashing store with Warren Wright when he committed the murder and that she specifically told law enforcement that he carried the murder weapon in a black bag (Ex. N), just as the lone eyewitness Terrance Crawford told police. Ex. A, at 2. They did not hear how suspect Warren Wright, a repeat felon with a history of committing numerous burglaries (Ex. R, at 1), was later found in possession of a loaded firearm with obliterated serial numbers in the weeks following the murder. Ex. O. They did not hear that on the day of the murder, a former employee, Juanette Williams, called homicide and told them that the storefront was also involved in "illegal" numbers, and told police about a former manager, "K." Ex. T. And they did not hear that K was also named to police by Mr. Wexler's family in the hours after his death. Ex. I.

The new evidence would have transformed the jury's perception of the Cash Plus store, and the potential motive behind Harold Wexler's murder. It also would have destroyed the Commonwealth's persistent false assertion that the crime could have only been committed by

Frank Bagley or Tracy Jordan. See *Gumm v. Mitchell*, 775 F.3d 345, 368 (6th Cir. 2014). (The "undisclosed contradictory evidence could have been used by the defense to disrupt the state's narrative of the crime.")

Had the Commonwealth disclosed this evidence, the jury would have learned that there were other suspects who fit the description provided by the only eyewitness, as well as leads who had a strong incentive to harm Mr. Wexler. Those leads and suspects would have been weighed against Tracy Jordan, who was an honorably discharged Marine Veteran, a father of three, who previously worked in law enforcement, had never been arrested before, and had no incentive to harm Mr. Wexler. Additionally, Mr. Jordan owned a home only blocks away from Cash Plus and he and his family routinely shopped at the store. The suppressed evidence would have been considered in light of Mr. Jordan's testimony where he explained his whereabouts on the day of the murder and denied any involvement in the homicide.

The new evidence also completely eviscerates the reliability of law enforcement's investigation. The revelations substantiate Mr. Jordan's assertion that his arrest was made in haste and that the police and prosecution were unwilling to admit, once it was determined that the initial ballistics match was false, that the charges should be dismissed. There is no evidence that law enforcement even attempted to question the store's employees about the money laundering scheme, or to identify the other defendants that Mr. Wexler implicated while cooperating with the FBI. There is no evidence that the police seriously investigated Warren Wright or attempted to track down the tipster who provided the evidence against him. In fact, the direct opposite is true. When homicide detectives searched Warren Wright's vehicle and found him to be in illegal possession of a fully loaded firearm with obliterated serial numbers (Ex. O), they did not even arrest him. All of these points would have been highlighted by counsel, and in

an already weak case which the jury deliberated for three days and came close to deadlocking, this evidence clearly undermines confidence in Mr. Jordan's conviction.

The Commonwealth's failure to disclose the alternative suspect evidence also foreclosed critical investigative measures that reasonably competent counsel would have taken. "In considering the cumulative materiality of the *Brady* claims before it, a court may consider directly any adverse effect that the prosecutor's failure to respond might have had on the preparation or presentation of the defendant's case." *Juniper v. Davis*, 74 F.4th 196, 214 (4th Cir. 2023); quoting *United States v. Bagley*, 473 U.S. 667, 683 (1985) ("The reviewing court should assess the possibility that such effect might have occurred in light of the totality of the circumstances and with an awareness of the difficulty of reconstructing in a post-trial proceeding the course that the defense and the trial would have taken had the defense not been misled by the prosecutor's incomplete response.") The disclosure of this evidence would have reshaped counsel's trial preparation.

Had the alternative suspect evidence been disclosed, counsel's cross-examination of Adrienne Byrd and Terrance Crawford would been radically different, and revolved around their knowledge of the dangerous, illegal activity that was occurring throughout Mr. Wexler's businesses. Ms. Byrd would have been a particularly important person to question concerning this topic given that she testified that she had known Harold Wexler since he first opened the store. "When he first opened the store, I was one of his customers, so we became friends, employers, and confidants." N.T. 11/2/06, at 101. She would have been questioned about her knowledge of Mr. Wexler's status as an FBI informant, and Terrance Crawford would have been presented with Warren Wright's mugshot.

Counsel would have also called Mr. Wexler's employee, Juanette Williams, who told detectives that Mr. Wexler was operating an illegal numbers operation throughout his businesses (Ex. T), questioned her as to the details of the scheme, and her knowledge of who was involved in the illegal activity. Additionally, Counsel would have investigated "K" and called her as a witness. Counsel would have asked K the extent of her involvement in the illegal activities throughout Mr. Wexler's businesses, and if any other employees were involved and/or cooperating with federal authorities.

Counsel would have questioned Mr. Wexler's attorney, who persistently asked law enforcement whether they recovered Mr. Wexler's laptop and immediately told them that Mr. Wexler was an FBI informant and criminal defendant upon learning of his death. *See* Exhibits K at 2, I, and AG. Mr. Wexler's attorney would have also been asked about his knowledge of the information contained on the laptop that was stolen, and whether Mr. Wexler had ever expressed fear or been threatened by his employees. Additionally, counsel's cross-examination law enforcement would have been radically altered with a focus on the investigative steps, particularly the lack thereof, which police took concerning the alternative suspects.

All of the above withheld *Brady* evidence must also be evaluated alongside the suppressed submission of the ballistics evidence to NIBIN, which did not result in a hit or a match. Ex. Y. The Commonwealth's two-phase portrayal of Mr. Jordan's guilt—that the culprit could only be Bagley or Jordan, and that Nannette Jordan's firearm was a near ballistics match—would have been wholly deflated considering the alternative suspect evidence and the NIBIN nonhit. Ballistician Stott's testimony and expert opinion would have been thoroughly impeached with the NIBIN results. Detectives McGuffin and Griffin would have been impeached with their failure to investigation *any* of the compelling alternative suspects. The Commonwealth's closing

argument that Nannette Jordan's service weapon nearly matched the ballistics from the crime scene would have been foreclosed, as would the false suggestion that the crime could have only been committed by Mr. Jordan or Mr. Bagley. Additionally, the new evidence would have gone hand-in-glove with Mr. Jordan's defense that his arrest was wrongfully made in haste.

The withheld alternative suspect evidence and suppressed NIBIN nonhit must also be evaluated in light of the suppressed incentives offered to its only eyewitness, Terrance Crawford. *See* Exhibits AA-AD. Mr. Crawford provided the only evidence linking the assailant to a plastic bag found at the crime scene which had Mr. Jordan's fingerprint on it. The new evidence reveals clear pressure and incentive for Mr. Crawford to tailor his testimony to fit the Commonwealth's theory of the case. Additional new evidence concerning Mr. Crawford's drug use would have also led the jury to question the reliability of his testimony that the culprit was carrying a plastic bag.

When the withheld evidence is evaluated collectively and weighed against the evidence introduced at trial, it is clear that confidence in Mr. Jordan's second-degree murder conviction is undermined.

2004 prosecution	**2004 prosecution compared to suppressed evidence**
The ballistics recovered from the crime scene were a near match for Nannette Jordan's service weapon.	The ballistics recovered from the crime scene were compared against Nannette Jordan's service weapon through a computerized ballistics identification system and the results showed that they did not match to her weapon. Ex. Y.

Harold Wexler owned an ordinary neighborhood check cashing business. "You can go to a lot of neighborhoods in the city and you'll see these sort of businesses." N.T. 11/2/06, at 27. Mr. Wexler was "a hard working businessman who has been running this place, had a couple of other check cashing agencies [.]" N.T. 11/6/06, at 70-71.	Harold Wexler's check cashing business was involved in a number of illegal activities including assisting drug traffickers in money laundering and running illegal numbers. Harold Wexler was a federal criminal cooperator and FBI informant who had recently pled guilty and received a downward departure for his cooperation against others involved in an international money laundering scheme. At the time of his murder, Mr. Wexler was still providing the FBI with evidence in a criminal prosecution against multiple individuals, including his own employees. *See* Exhibits F-H.
The crime could have only been committed by Tracy Jordan or Frank Bagley, and Mr. Jordan was the more likely suspect. N.T. 11/6/06, at 34-38.	An eyewitness told law enforcement that the murder was committed by Warren Wright and explained that she was with him when he pulled a gun out of a black bag and shot and killed Harold Wexler. Ex. N. Wright matched Terrance Crawford's description. Ex. A, at 2.
Although no money was taken, the Commonwealth theorized that Tracy Jordan, who had lost his job, robbed and killed Harold Wexler because he was destitute. "I want you to think about the desperate situation that the defendant was in at that time." N.T. 11/6/06, at 57. "[H]e reached the breaking point and he went to that store and it was planned out, wife's off, when the business is opening and the money is available." *Id*. at 60.	Harold Wexler, his business, and his employees were involved in a large-scale money laundering scheme with drug traffickers. Immediately after the murder, the IRS, FBI, and Harold Wexler's own attorney contacted law enforcement, believing there was likely a connection to his cooperation with the FBI. Ex. I. Only his laptop was stolen (Ex. J), which his attorney specifically asked law enforcement about. Ex. K, AG.
Tracy Jordan exhibited suspicious behavior when he crossed out the empty spaces of his statement because he knew "how you people are." N.T. 11/3/06, at 217, 223-224. "I wonder why an innocent man took a pen and crossed off every bit of the bottom of that, I know the way you people are." N.T. 11/6/06, at 64-65.	Law enforcement narrowed its focus on Tracy Jordan, failing to investigate critical leads. Though an eye-witness directly implicated Warren Wright (Ex. N), law enforcement failed to competently investigate him and inexplicably failed to arrest him even when he was found to be in possession of an illegal fully loaded firearm (Ex. O). Similarly, though law enforcement knew that Wexler was cooperating with the FBI against his employees (Exhibits F-H), police failed to interview a single employee or conduct any investigation into the scheme. Police also failed utterly to follow up on employee Juanette Williams's information about Cash

	Plus employee involvement in a separate illegal numbers operation that was never investigated by law enforcement. Ex. T.
Harold Wexler's employee and friend, Adrienne Byrd, testified that nearly two years after the murder she was able to recall that there were no stray plastic bags on the floor of the store the Saturday before the murder.	Ms. Byrd would have been cross-examined on whether she was aware of or involved in the illegal activities taking place at the business; whether she was aware of Mr. Wexler's federal charges and cooperation; whether any of her coworkers expressed hostility or anger toward Mr. Wexler, or feared for their own lives and livelihoods because of the ongoing federal money laundering investigation and prosecution, and whether Mr. Wexler ever expressed any fear as a result of his FBI cooperation.
Terrance Crawford, never identified Tracy Jordan, but the Commonwealth argued that "everything else he had to say I would suggest to you matches this defendant." N.T. 11/6/06, at 44. "He's right on on the weight, stocky, the complexion, and everything else. Why would Terrance lie?" *Id*. at 50-51. "[H]e's a couple inches off on the height. I absolutely agree with that. He had told the police and it's in the statement five eight, five nine." *Id*. at 44.	Terrance Crawford's description of the shooter matched Warren Wright, including his height, and his account that the gunman wielded the weapon from a "black bag" (Ex. A, at 2) corresponded with information from the eyewitness tipper that Wright carried the murder weapon in a black bookbag—information that, critically, *was not publicly available*. Ex. N. Mr. Crawford would also have been impeached with the evidence that police offered incentives to him prior to his testimony. Counsel would have argued that Mr. Crawford's undisclosed drug abuse would have significantly affected his ability to accurately recall events. *See* Exhibits AA-AD.

The suppressed evidence "taken together, presents a significant challenge to the prosecution's theory of the case[.]" *Jamison v. Collins*, 291 F.3d 380, 391 (6th Cir. 2002). Every pillar of the Commonwealth's already weak case is erased by the withheld evidence. There can no longer be confidence in Mr. Jordan conviction. Petitioner has shown that he was denied a fair trial. Relief is warranted.

CONCLUSION

WHEREFORE, Mr. Jordan respectfully requests that this Court vacate his conviction and order any other relief it may deem appropriate.

Respectfully submitted,

s/ Jennifer Merrigan_____

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Dated: May 8, 2024

CERTIFICATE OF SERVICE

I, Jennifer Merrigan, certify that I have caused electronic copies and mailed first class copies of this petition to the following:

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s/ Jennifer Merrigan

Jennifer Merrigan

Dated: May 8, 2024